S. HRG. 98-211

BICENTENNIAL OF THE CONSTITUTION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 118

A BILL TO PROVIDE FOR THE ESTABLISHMENT OF A COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION

MARCH 1, 1983

Serial No. J-98-11

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
19-789 O WASHINGTON : 1983

5521-69

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, JR., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania

JOSPEH R. BIDEN, JR., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

VINTON DEVANE LIDE, *Chief Counsel and Staff Director*
DEBORAH K. OWEN, *General Counsel*
SHIRLEY J. FANNING, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON THE CONSTITUTION

ORRIN G. HATCH, Utah, *Chairman*

STROM THURMOND, South Carolina
CHARLES E. GRASSLEY, Iowa

DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont

STEPHEN J. MARKMAN, *Chief Counsel and Staff Director*
RANDALL R. RADER, *General Counsel*
CLAIRE GREIF, *Chief Clerk*
SHARON PECK, *Clerk*

CONTENTS

STATEMENTS OF MEMBERS

	Page
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah, chairman, Subcommittee on the Constitution	1, 3
Thurmond, Hon. Strom, a U.S. Senator from the State of South Carolina, chairman, Committee on the Judiciary	15
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	19

PROPOSED LEGISLATION

S. 118, a bill to provide for the establishment of a Commission on the Bicentennial of the Constitution	6

CHRONOLOGICAL LIST OF WITNESSES

Ford, Hon. Gerald R., former President of the United States	21
Murphy, Betty Southard, on behalf of the American Bar Association	28
Markey, Chief Judge Howard T., U.S. Court of Appeals for the Federal Circuit	34
Morris, Richard B., project '87, American Historical Association and American Political Science Association, and professor of history emeritus, Columbia University	50
Dembling, Paul G., president, Federal Bar Association	53

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Dembling, Paul G.:	
Testimony	53
Prepared statement	55
Resolution adopted by the National Council of the Federal Bar Association	58
Ford, Hon. Gerald R.: Testimony	21
Markey, Chief Judge Howard T.:	
Testimony	34
Prepared statement	39
Letter from Chief Justice Warren E. Burger to Hon. Orrin G. Hatch, February 4, 1983	49
Morris, Richard B.: Testimony	50
Murphy, Betty Southard:	
Testimony	28
Prepared statement	30

APPENDIX

Additional Statements

Butler, William P., on behalf of the Constitution Commemoration Study Group	61
Conte, Hon. Silvio O., a U.S. Representative in Congress from the State of Massachusetts	64
Feinman, Boris, founder, Convention II	66
Higgins, W. Robert, Ph. D., director, Center for the Study of Federalism	67
Randolph, Hon. Jennings, a U.S. Senator from West Virginia	69
Taylor, Charles H., International Justice, Phi Alpha Delta Law Fraternity	72

BICENTENNIAL OF THE CONSTITUTION

TUESDAY, MARCH 1, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON THE CONSTITUTION,
Washington, D.C.

The subcommittee met at 9:47 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Present: Senators Thurmond (chairman of the full committee), Specter, DeConcini, and Leahy.

Staff present: Randall Rader, chief counsel; Phil Barker, professional staff member; Claire Greif, chief clerk; and Sharon Peck, clerk.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. We will call this subcommittee of the Senate Judiciary Committee together.

At the outset I would note that on this day in 1781, the Colonies took an important step in the development of the Constitution by approving the Articles of Confederation.

This hearing is an event of historical significance in another sense. President Ford is the first former President since Harry Truman in 1959 to testify before a congressional committee. I think it a tribute to President Ford's commitment to the Constitution that he would lend his great prestige in the eyes of the American people to this Bicentennial commemoration.

It is also fitting that the President who stood at the Nation's helm when we commemorated the Bicentennial of the Declaration of Independence should in turn help inaugurate the commemoration of the Bicentennial of the Constitution of the United States.

I would also like to note that former Presidents Nixon and Carter were unable to arrange their schedules to join us this morning, but sent their best wishes for the success of the Bicentennial. In particular, I chatted with President Carter, who left for the Middle East last evening, otherwise he would have been very happy to share this opportunity with you, Mr. President.

Mr. President, we on this committee express our deep-felt gratitude for your appearance here this day and we look forward, as we have in the past, to receiving your counsel.

It means a great deal for us today to have you here on the specific subject of today's hearing, S. 118, the 98th Congress version of

the bill that twice passed the Senate unanimously in the 97th Congress. This legislation would establish a commission to coordinate the commemoration of the Bicentennial of the Constitution.

[The prepared statement of Senator Hatch, and the bill, S. 118, follow:]

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

THIS HEARING TODAY HAS AN ELEMENT OF SPECIAL HISTORICAL SIGNIFICANCE. ONLY RARELY IN THE HISTORY OF OUR REPUBLIC HAVE INDIVIDUALS WHO SERVE OR HAVE SERVED IN ALL THREE BRANCHES OF GOVERNMENT ESTABLISHED BY THE CONSTITUTION GATHERED TO DISCUSS A POLICY FOR THE NATION. USUALLY THE DISPERSAL OF POWERS EFFECTED BY THE FRAMERS OF THE CONSTITUTION HAS APPROPRIATELY OPERATED TO KEEP REPRESENTATIVES OF THE VARIOUS BRANCHES OF GOVERNMENT SEPARATE. IT IS FITTING, HOWEVER, THAT THE EVENT THAT DRAWS FORMER PRESIDENT GERALD FORD TOGETHER WITH CHIEF JUDGE HOWARD MARKEY BEFORE THE MEMBERS OF THIS SENATE COMMITTEE IS THE APPROACHING ANNIVERSARY OF THE CREATION OF THE VARIOUS BRANCHES OF GOVERNMENT.

THE SPECIFIC SUBJECT OF TODAY'S HEARING IS S. 118, THE 98TH CONGRESS VERSION OF THE BILL THAT TWICE PASSED THE SENATE UNANIMOUSLY IN THE 97TH CONGRESS. THIS LEGISLATION WOULD ESTABLISH A COMMISSION TO COORDINATE THE COMMEMORATION OF THE BICENTENNIAL OF THE CONSTITUTION.

THIS BICENTENNIAL COMMEMORATION DRAWS NIGH AT A TIME WHEN IT IS DESPERATELY NEEDED TO REINVIGORATE OUR NATIONAL UNDERSTANDING AND COMMITMENT TO THE BASIC PRINCIPLES THAT ANIMATE OUR REPUBLIC. DURING HEARINGS HELD LAST CONGRESS THIS SUBCOMMITTEE LEARNED THAT TEST SCORES MEASURING THE BASIC COMPREHENSION OF THE DUTIES OF CITIZENSHIP HAD DECLINED FROM 1969 TO 1976. FOR EXAMPLE, ONLY A LITTLE MORE THAN HALF OF THE 17-YEAR-OLDS AND 32 PERCENT OF THE 13-YEAR-OLDS KNEW THAT EACH STATE HAS TWO SENATORS. THUS, STUDENTS WHO ARE WITHIN A YEAR OF VOTING DO NOT KNOW SOME OF THE MOST RUDIMENTARY ASPECTS OF MASTER PLAN DEVELOPED IN 1789 TO PROTECT THE LIBERTIES ENUNCIATED BY THE DECLARATION OF INDEPENDENCE.

THIS BICENTENNIAL PRESENTS A ONCE-IN-A-LIFETIME OPPORTUNITY TO CORRECT THESE DIRE EDUCATIONAL DEFICIENCIES AND FOSTER A BETTER UNDERSTANDING OF OUR REPRESENTATIVE GOVERNMENT. BECAUSE OURS IS A "GOVERNMENT OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE," ITS FUNCTION AND SURVIVAL DEPEND VERY DIRECTLY ON THE CAPACITY OF THOSE PEOPLE TO CONVERT AN UNDERSTANDING OF OUR CONSTITUTIONAL SYSTEM INTO SELF-GOVERNMENT AND CITIZEN PARTICIPATION. OUR FREE REPUBLIC DEPENDS ON CITIZENS TO VOTE RESPONSIBLY, TO HOLD PUBLIC OFFICES, TO SERVE IN THE ARMED FORCES, TO GIVE TESTIMONY AT PUBLIC HEARINGS, TO PARTICIPATE

IN TRIALS AS JURORS OR WITNESSES, TO ENGAGE IN DISCUSSIONS OF PUBLIC AFFAIRS, TO OFFER VOLUNTARY SERVICE WITHIN THEIR COMMUNITIES, AND TO RAISE THE RESPONSIBLE CITIZENS OF THE FUTURE WITHIN THEIR FAMILIES. WITHOUT A WORKING KNOWLEDGE OF OUR CHARTER OF FREEDOMS AND VOLUNTARY ACTIVITIES IN CONJUNCTION WITH SUCH UNDERSTANDING, OUR PARTICIPATORY GOVERNMENT WOULD SOON PERISH. OUR GOVERNMENT IS ONLY AS STRONG AS THE UNDERSTANDING AND WILL OF THE PEOPLE WHO COMPRISE IT. IN A REAL SENSE, I WOULD MAINTAIN, THE EDUCATIONAL PROSPECTS OF THIS BICENTENNIAL COMPRISE A "NATIONAL DEFENSE" PROGRAM.

WITH THIS IN MIND, THE BICENTENNIAL CELEBRATION CONTEMPLATED BY S. 118 CONSISTS OF MORE ENDURING ACTIVITIES THAN A SERIES OF PYROTECHNIC DISPLAYS AND PARADES. WHILE CELEBRATIVE ACTIVITIES ARE IMPORTANT TO REKINDLE OUR NATIONAL PRIDE IN THE CONSTITUTION, A NATIONAL REEXAMINATION OF OUR NATION'S COMMON PRINCIPLES AND THEIR EMBODIMENT IN THE LANGUAGE OF THE CONSTITUTION IS PERHAPS MORE IMPORTANT.

THE BICENTENNIAL CONTEMPLATED BY S. 118 IS TRUE TO THE CONSTITUTION'S PRINCIPLE OF FEDERALISM IN THAT IT RECOGNIZES A PIVOTAL ROLE FOR THE STATES. THE FEDERAL BICENTENNIAL COMMISSION WILL INDEED PLAY AN IMPORTANT ROLE AS A COORDINATOR, BUT WILL UNDERTAKE ONLY A "LIMITED NUMBER" OF WORTHY PROJECTS. STATES, ON THE OTHER HAND, SHOULD PERCEIVE NO LIMITS ON THE ACTIVITIES WITHIN THE WILL OF THEIR CITIZENS.

THE BICENTENNIAL CONTEMPLATED BY S. 118 IS ALSO TRUE TO THE CONSTITUTION'S PRINCIPLE OF LIMITED NATIONAL GOVERNMENT IN THAT IT RECOGNIZES A LEADING ROLE FOR THE PRIVATE SECTOR. PRIVATE ORGANIZATIONS THROUGHOUT THE NATION WILL PERHAPS CARRY THE GREATEST WEIGHT IN MAKING THIS COMMEMORATION SIGNIFICANT. INDEED EVEN THE COMMISSION ITSELF WILL DEPEND ON THE CONTRIBUTIONS OF PRIVATE CITIZENS AND ORGANIZATIONS TO FINANCE MANY OF ITS ACTIVITIES. THE FEDERAL COMMISSION SHOULD ENCOURAGE PRIVATE ACTIVITIES TO MAKE THE CONSTITUTION'S MESSAGE MEANINGFUL IN EACH OF AMERICA'S COMMUNITIES AND HOMES.

THE BICENTENNIAL CONTEMPLATED BY S. 118 IS ALSO TRUE TO THE CONSTITUTION'S RESPECT FOR A DIVERSITY OF THOUGHT AND EXPRESSION. THE FEDERAL COMMISSION WILL NOT ESPOUSE ANY SINGLE, NARROW VIEW OF WHAT IS MOST IMPORTANT ABOUT THE CONSTITUTION OR ITS DEVELOPMENT. THE FEDERAL COMMISSION'S FOCUS SHOULD BE THE MEN AND WOMEN OF 1787 AND THE EVENTS THAT SHAPED THE PROVISIONS OF OUR NATION'S FOUNDATIONAL DOCUMENT, NOT THE PROPOSED LEGISLATIVE AGENDA OF ANY SINGLE PARTY OR GROUP.

IN CONCLUSION, I WOULD LIKE TO ESPECIALLY THANK PRESIDENT FORD FOR MAKING THE EFFORT TO LEND HIS GREAT PRESTIGE AND HIGH STANDING WITH THE AMERICAN PEOPLE TO THIS BICENTENNIAL. IN ADDITION, WE OWE A DEBT OF GRATITUDE TO CHIEF JUDGE MARKEY FOR REPRESENTING THE JUDICIARY TODAY BEFORE THE COMMITTEE. FINALLY WE APPRECIATE THE COOPERATION AND SUPPORT OF THE LEGAL AND HISTORICAL COMMUNITIES, ABLY REPRESENTED TODAY BY OTHER DISTINGUISHED WITNESSES.

THE SINGLE MOST IMPORTANT KEY TO A SUCCESSFUL NATIONAL CELEBRATION IS AN EXPRESSION FROM THE ENTITY THAT REPRESENTS ALL OF THE PEOPLE OF THE UNITED STATES. IN SHORT, CONGRESS, BY CREATING A FEDERAL BICENTENNIAL COMMISSION, MUST ACKNOWLEDGE OUR NEED TO REEDUCATE AND REDEDICATE OURSELVES TO THE PRINCIPLES OF THE DOCUMENT THAT HAS GUARANTEED THE LONGEVITY OF OUR GRAND EXPERIMENT IN SELF-GOVERNMENT. S. 118 DOES NOT ASK FOR VAST RESOURCES, BUT IT DOES ASK US TO RECOGNIZE WHAT PRIME MINISTER WILLIAM GLADSTONE OF BRITAIN, ON THE OCCASION OF THE CONSTITUTION'S CENTENNIAL, CALLED "...THE MOST REMARKABEL WORK KNOWN TO ME IN MODERN TIMES TO HAVE BEEN PRODUCED BY THE HUMAN INTELLECT."

19-789 O - 83 - 2

II

98TH CONGRESS
1ST SESSION

S. 118

To provide for the establishment of a Commission on the Bicentennial of the Constitution.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 25), 1983

Mr. HATCH (for himself, Mr. THURMOND, Mr. DECONCINI, Mr. MATHIAS, Mr. LEAHY, Mr. KENNEDY, Mr. BAUCUS, and Mr. LAXALT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To provide for the establishment of a Commission on the Bicentennial of the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is established a Commission on the Bicentennial of the United States Constitution, hereinafter referred to as the "Commission".

FINDINGS

SEC. 2. The Congress finds that—

(1) the bicentennial of the Constitutional Convention's adoption of the Constitution occurs on September 17, 1987;

(2) the Constitution enunciates the limitations on government, the inalienable rights of man, and the timeless principles of individual liberty and responsibility for the people of the United States of America;

(3) this document has set an enduring example of representative democracy for the world; and

(4) the maintenance of the common principles that animate our Republic depend upon a knowledge and understanding of their roots and origins.

PURPOSE

SEC. 3. It is the purpose of this title to establish a Commission to promote and coordinate activities to commemorate the bicentennial of the Constitution.

MEMBERSHIP

SEC. 4. (a) The Commission shall be composed of sixteen members as follows:

(1) fifteen members appointed by the President, four of whom shall be appointed from among the recommendations made by the Speaker of the House of Representatives, four of whom shall be appointed from among the recommendations made by the President pro tempore of the Senate, in consultation with the

majority leader and minority leader of the Senate, and three of whom shall be appointed from among the recommendations made by the Chief Justice of the United States;

(2) the Chief Justice of the United States.

(b) Such members shall be chosen from among individuals who have demonstrated scholarship, a strong sense of public service, and abilities likely to contribute to the fulfillment of the duties of the Commission.

(c) Members of the Commission shall be appointed for the life of the Commission.

(d) The Commission shall select a chairman from among its members who shall serve as Chairman for the life of the Commission.

(e) Eight members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(f) A vacancy in the Commission resulting from the death or resignation of a member shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

ADMINISTRATIVE PROVISIONS AND POWERS

SEC. 5. (a) The Commission shall appoint a staff director who shall be paid at a rate not to exceed the rate of basic pay provided for level I of the executive schedule pursuant to section 5316 of title 5, United States Code.

(b) The Commission is authorized to appoint and fix the compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, of such additional publicly paid personnel up to five persons, as the Chairman finds necessary to carry out the purposes of this title. Such personnel shall be compensated at a rate not to exceed a rate equal to the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code. The Commission may hire additional personnel out of private donations.

(c) Each member of the Commission shall serve without compensation, except that each member shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(d) The Commission may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at a rate of pay not to exceed the rate of basic pay for GS–15 of the General Schedule under section 5332 of title 5, United States Code.

(e) The Commission is authorized to procure supplies, services, and property, and make contracts, in any fiscal year, only to such extent or in such amounts as are provided in appropriation Acts.

(f) The Commission is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of the General Services Administration.

(g) The Commission is authorized to accept, use, solicit, and dispose of donations of money, property, or personal services.

(h) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(i) The Commission shall have the authority to design and use a logo as the official emblem of the bicentennial. The Commission shall issue rules and regulations regarding the use of such logo, as they deem appropriate to carry out the purposes of this title.

DUTIES OF THE COMMISSION

SEC. 6. (a) The Commission shall—

(1) plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the Federal Government seeking to harmonize and balance the important goals of ceremony and celebration

with the equally important goals of scholarship and education;

(2) encourage private organizations, and State and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification, and history of the Constitution and the specific features of the document;

(3) coordinate, generally, activities throughout all of the States; and

(4) serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

(b) In planning and implementing appropriate activities to commemorate the bicentennial, the Commission shall give due consideration to—

(1) the historical setting in which the Constitution was developed and ratified, including such antecedents as the Federalist Papers, the Articles of the Confederation, and the ratification debates in the States;

(2) the contribution of diverse ethnic and racial groups;

(3) the relationship and historical development of the three branches of the Government;

(4) the importance of activities concerning the Constitution and citizenship education throughout all of

the States regardless of when such State achieved statehood;

(5) the unique achievements and contributions of the participants in the Constitutional Convention of 1787 and the State ratification proceedings;

(6) the diverse legal and philosophical views regarding the Constitution;

(7) the need for reflection upon both academic and scholarly views of the Constitution and the principle that the document must be understood by the general public;

(8) the substantive provisions of the Constitution itself; and

(9) the impact of the Constitution on American life and government.

(c) The Commission shall seek the cooperation, advice, and assistance from both private and governmental agencies and organizations, including the National Endowment for the Arts, the National Endowment for the Humanities, the Library of Congress, the Smithsonian Institution, the National Archives, the Department of the Interior, State and local governments, learned societies, academic institutions, and historical, patriotic, philanthropic, civic, and professional groups, and bar associations.

(d) The Commission may, in carrying out the purposes of this title, delegate authority to State advisory commissions to assist in implementing this title.

(e) Within two years after the date of enactment of this title, the Commission shall submit to the President and each House of the Congress and the Judicial Conference a comprehensive report incorporating specific recommendations of the Commission for commemoration and coordination of the bicentennial and related activities. Such report shall include recommendations for publications, scholarly projects, conferences, programs, films, libraries, exhibits, ceremonies, and other projects, competitions and awards, and a calendar of major activities and events planned to commemorate specific historical dates. Each year after such comprehensive report, the Commission shall submit an annual report to the President and each House of the Congress and the Judicial Conference until such Commission terminates.

TERMINATION

SEC. 7. The Commission shall terminate on December 31, 1989.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are authorized to be appropriated for purposes of this title $300,000 for fiscal year 1983 and such sums as may be necessary for the subsequent fiscal years through fiscal year 1989.

19-789 O - 83 - 3

Senator HATCH. We are also very happy to have the chairman of the Judiciary Committee here today and, of course, our ranking minority member as well as other members of the Judiciary Committee.

At this time, we will turn to our ranking minority member, Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I will be very short. I want to add my thanks to you, Mr. President, for taking the time to be here. I know you are probably as busy as you were a few years ago when you were down on Pennsylvania Avenue.

I hope that your appearance here will be a precedent setting event because I believe the former Presidents of this country, all of them, can add a great deal in testimony on a number of subjects. It would be most helpful to the Members of Congress to have an opportunity to hear your testimony. S. 118 will not be one of the more controversial subjects to hit the Congress this year, but I am hopeful that resulting from your appearance we will see a litany of other testimony by former Presidents, if not in person, at least in writing. I thank you and commend you for being here.

Thank you, sir.

Senator HATCH. Thank you, Senator DeConcini.

Mr. Chairman, Senator Thurmond.

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. Chairman, I have only about 7 minutes here. I ask unanimous consent that my statement be placed in the record in order to save the time of President Ford.

Senator HATCH. Without objection, we will place the full statement in the record.

[The prepared statement of Senator Thurmond follows:]

PREPARED STATEMENT OF SENATOR STROM THURMOND
CHAIRMAN, COMMITTEE ON THE JUDICIARY

MR. CHAIRMAN:

The Subcommittee on the Constitution this morning resumes consideration of legislation to establish a commission for the commemoration of the bicentennial of the United States Constitution. On September 17, 1987, this country will celebrate the 200th anniversary of the engrossing of the new Constitution that was to replace the Articles of Confederation.

While identical legislation to that being considered today was unanimously approved last Congress by the full Judiciary Committee, and subsequently incorporated by the full Senate in a omnibus legislative package considered late in the session, the House failed to consider this measure at that time. I am confident that early action on this bill will ensure adequate opportunity for the House to take appropriate action on this important legislation.

Briefly, I would like to share several general observations on what I believe will lead to a meaningful celebration of our Nation's bicentennial. Primary, of course, is the early passage of this legislation so that full opportunity can be given the Commission to thoroughly plan and coordinate the activities and events of the bicentennial. I would hope that, wherever there are lessons to be learned from our celebration of the bicentennial of the American Revolution during the past decade, we will pause to consider these.

First, I hope that there will be an appropriate balance between the fireworks and the parades, and the more reflective aspects of the bicentennial. While the bicentenniel ought to be a time of celebration, it ought to be a time as well where each of us can reflect about those principles within our Constitution, and those institutions created by our Constitution, that have made it such a great and durable document. We must contemplate the Constitution as well as celebrate it.

Second, in the same manner that our Constitution establishes governing responsibility in disperse places, I would hope that the bicentennial commission will commit itself to the same principle. While the commission will be the chief coordinating arm of the bicentennial, it must respect the rights of the States and municipalities and private institutions to make their unique contributions. Coordination of the bicentennial ought not be confused with centralization.

Third, the bicentennial ought not be a sterile celebration of a Constitution that does not exist. What I mean here is that the bicentennial ought to give due recognition not only to those elements of the Constitution that have achieved the support of the consensus-- the principles of checks and balances, and separated powers, for example-- but it ought to recognize the great debates and controversies that have always surrounded it. Let us have vigorous discussion on the incorporation doctrine, on State's rights, on the role of judicial review, and on the meaning of the general welfare clause. Let us discuss during the bicentennial those things in the Constitution which unite us and those which

have caused and continue to cause division. Ultimately, it is our ability to discuss our divisions which serves to unite us.

Finally, Mr. Chairman, I would hope that there will be some permanent legacy from the bicentennial, perhaps some tangible legacy in the form of new studies of our constitutional heritage; perhaps some intangible legacy in the expanded opportunity for our citizens to learn of the values and principles that are at the foundation of our organic law. The bicentennial must have, at its core, some sense of a permanent contribution to an understanding of the American Constitution.

The legislation that we are considering today offers this body the rare opportunity-- in the midst of a seemingly endless stream of authorizations, appropriations, resolutions, and amendments that we consider every day-- to pause and reflect upon the purpose of it all. It offers us the rare opportunity to place some perspective on the flurry of activities that consumes each of us in this body during the legislative session. If it were to do nothing more than this, the bicentennial would be worth considering. That it can surely contribute far more to understanding the success of the American experiment certainly makes this legislation among the most important to be considered by this Congress.

The CHAIRMAN. I would like to take this opportunity to welcome President Ford back to Washington and back to the Capitol. I do not know of any President who has been held in higher esteem than President Ford. He is a fine man and he made a good President. We are delighted to have you back. I know your contribution here will be very worthwhile.

Senator HATCH. Thank you.

Senator Leahy.

Senator LEAHY. Mr. Chairman, I would also ask that my full statement be placed in the record.

I would make only this personal note. The most exciting days I spent as a U.S. Senator was one of the days that former President Ford came on the floor of the Senate, and I was fortunate enough to be there, and he spoke. That had its own unique precedence there, and now again today.

I think that we are extremely fortunate to have such an outstanding American here. The President is not only a friend but a man that I admire. I think that the country could well benefit, certainly the country and especially the Congress could well benefit to have the opportunity to have former President—especially people of President Ford's stature, here to talk with us, and I thank you for coming.

Senator HATCH. Thank you, Senator.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

WHEN THE NEW GOVERNMENT OF THE UNITED STATES WAS FORMED AFTER THE AMERICAN REVOLUTION, THERE WERE ONLY THE THIRTEEN ORIGINAL STATES. ACROSS THE CONTINENT STRETCHED A VAST TERRITORY WHICH WAS SPARSELY SETTLED. IF THE UNITED STATES WOULD GROW, IT HAD TO EXPAND INTO THIS AREA. VERMONT WAS THE FIRST OF THE NEW STATES TO JOIN THE UNION. THE PEOPLE OF VERMONT, WHOSE EXPLOITS DURING THE REVOLUTION AT THE BATTLE OF HUBBARDTON AND ELSEWHERE HAD A DEFINITE IMPACT ON THE OUTCOME OF THE WAR, CAME INTO THE UNITED STATES AS THE 14TH STATE IN 1791 BECAUSE OF THE GUARANTEES OF PERSONAL LIBERTIES AND RESPONSIBILITIES UNDER THE CONSTITUTION.

IN FOUR YEARS, THE UNITED STATES WILL CELEBRATE THE 200TH ANNIVERSARY OF THE CONSTITUTIONAL CONVENTION AND THE TRANSMISSION OF THE CHARTER BY THE CONTINENTAL CONGRESS TO THE INDIVIDUAL STATES FOR RATIFICATION. OVER THE TWO SUCCEEDING YEARS, WE WILL HAVE THE BICENTENNIAL OF THE RATIFICATION, THE FIRST MEETINGS OF THIS BODY AND THE HOUSE OF REPRESENTATIVES, THE ELECTION AND INAUGURATION OF PRESIDENT WASHINGTON, THE PASSAGE OF THE FEDERAL JUDICIARY ACT, THE SELECTION OF THE CHIEF JUSTICE AND HIS ASSOCIATES, THE FIRST MEETING OF THE FEDERAL COURTS, AND THE DRAFTING, ADOPTION AND SUBMISSION TO THE STATES FOR RATIFICATION OF THE BILL OF RIGHTS.

THE APPROACHING YEARS, 1987-1989, ARE EXTREMELY IMPORTANT NOT ONLY IN OUR HISTORY, BUT IN THE HISTORY OF THE WORLD. WE ARE ALREADY THE OLDEST EXISTING DEMOCRATIC GOVERNMENT IN THE HISTORY OF MAN. OUR CONSTITUTION AND GOVERNMENT HAVE BEEN MODELS FOR REPRESENTATIVE GOVERNMENTS ON MOST OF THE CONTINENTS OF THE WORLD. THE FEDERAL GOVERNMENT, THE STATES, PRIVATE GROUPS, AND LOCAL GOVERNMENTS SHOULD ALL TAKE PART IN PLANNING FOR ITS BICENTENNIAL.

VERMONT, AS THE FOURTEENTH STATE, RECOGNIZES THAT THE COMMEMORATION OF THE DRAFTING AND ADOPTION OF THE CONSTITUTION IS JUST AS IMPORTANT TO HAWAII, THE 50TH STATE, AS IT IS TO DELAWARE, THE FIRST. THE RIGHTS OF CITIZENSHIP GRANTED UNDER THE CONSTITUTION BELONG TO ALL OF US, NO MATTER WHERE WE LIVE, NO MATTER WHEN WE ARRIVED, NO MATTER WHAT THE COLOR OF OUR SKIN, OR NO MATTER WHAT RELIGION WE PRACTICE.

THE CONSTITUTION BICENTENNIAL BILL, WHICH I HAVE COSPONSORED, WOULD ESTABLISH A FEDERAL COMMISSION TO JOIN WITH OTHER GROUPS IN PLANNING FOR THIS IMPORTANT EVENT. THE ROLE OF THE COMMISSION WOULD BE TO PLAN, COORDINATE, AND SERVE AS A CLEARINGHOUSE FOR ALL ACTIVITIES COMMEMORATING THE BICENTENNIAL OF THE CONSTITUTION.

IN RECOGNITION OF GENERAL FISCAL RESTRAINTS, THE FEDERAL APPROPRIATION CALLED FOR IN THE BILL IS MINIMAL.

WE DO NOT NEED FRILLS OR EXTRAVAGANCE, AND IN PLACE OF EXPENSIVE CEREMONIALS, THIS COMMISSION WILL STRESS HOMAGE TO IDEAS -- IDEAS THAT HAVE SHAPED A NATION AND MIGHT WELL HELP SAVE A WORLD FROM CHAOS.

IT IS A PLEASURE TO BE HERE THIS MORNING TO BEGIN CONSIDERATION OF A BILL TO GUIDE THE NATION IN HONORING ITS CONSTITUTION, AND IT IS A DOUBLE PLEASURE TO WELCOME A DISTINGUISHED FORMER PRESIDENT AND TO HEAR HIS VIEWS ON THE MEANING OF THIS IMPORTANT MILESTONE IN OUR HISTORY.

Senator HATCH. Senator Specter.

Senator SPECTER. Thank you Mr. Chairman. I want to join my colleagues in welcoming former President Ford here. I did not have the benefit of serving in the Congress when President Ford was the President but our relationship goes back to the days of the Warren Commission when President Ford served on that very distinguished body and I was one of the young staff lawyers. Together we answered some of the tough questions on the single-bullet theory which was high on the agenda of Commissioner Ford.

I think it particularly significant that President Ford has come forward on the occasion of this bill establishing a commission to commemorate the Bicentennial of the Constitution. The Bicentennial of the Declaration of Independence in 1976 was a major national event celebrated in the Nation's Capital and across the country, especially in my home city of Philadelphia. I look forward to the enactment of this bill to establish this commission to give proper recognition to this very important event in our Nation's history.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator Specter.

Before we turn to President Ford, I would like to acknowledge the presence of Judge Clifford J. Wallace of the Ninth Circuit Court of Appeals, and we are very, very happy to have Dr. Mark Cannon who is the Administrative Assistant to the Chief Justice of the Supreme Court of the United States of America with us today. Without further ado then, Mr. President, we will turn to you and your testimony. We welcome you before this committee. We are very grateful for your taking this kind of time, as we feel it adds to the significance of this particular bill at this time in this Nation's history.

Thank you for being here.

STATEMENT OF HON. GERALD R. FORD, FORMER PRESIDENT OF THE UNITED STATES

President FORD. Thank you very much, Mr. Chairman, members of the Committee on the Judiciary. It is a privilege——

Senator HATCH. Mr. President, could you pull those mikes over just a little bit closer to you so that everybody can hear? Thank you.

President FORD. As always, it is a very, very great privilege to come back to Washington, D.C., and it is especially nice and always particularly pleasant to come up on Capitol Hill where, as all of you know, I spent a good share of my lifetime in the Congress of the United States. Although I was on the other side of the Capitol, I had many wonderful experiences and made many close personal friends among those on the Senate side. I am especially delighted to come here this morning to renew some acquaintances but to also testify on behalf of legislation that I hope and trust that the Congress will enact so that we can get on with the job of appropriately commemorating and celebrating a very special event in the history of the United States.

A few years ago, I served at the head of one of the three branches of Government established by the Constitution when our

19-789 O - 83 - 4

Nation commemorated the Bicentennial of a document that boldly declared the independence of the American Colonies. In 1776, America's hope for liberty was little more than that—an ambitious hope. Other nations had entertained and articulated such hopes. The difference in America was that a handful of pioneering geniuses forged another document containing enduring principles of governance that have successfully preserved our liberty for two centuries. It is the Bicentennial of that culminating event in the universal pursuit of liberty that is drawing closer. Just as it was vitally important in 1776 for our Nation to reflect upon the aspirational concepts of the Declaration of Independence, the anniversary in 1987 of the Constitution's signing, in 1988 of the Constitution's ratification, and in 1989 of the Bill of Rights provide us with opportunities to reflect upon the document which gave those lofty principles life.

On the occasion of the Constitution's centennial, President Grover Cleveland anticipated our day, what we are hopefully going to do in 1983, and I will quote:

> If the American people are true to their sacred trust, another centennial day will come, and millions yet unborn will inquire concerning our stewardship and the safety of their Constitution. God grant they may find it unimpaired; and as we rejoice today in the patriotism and devotion of those who lived 100 years ago, so may those who follow rejoice in our fidelity and love for constitutional liberty.

We are among the millions that President Cleveland hoped would receive the opportunity to commemorate 200 years of "fidelity and love for constitutional liberty." Yet this approaching historical event offers us more than a chance to praise the "patriotism and devotion" of those who charted our current course, it provides the occasion for our Nation to consider the course we are currently charting for those who will commemorate the Constitution's third Centennial. This challenge is well stated by the bill which each of you helped pass the Senate unanimously last Congress. May I say, parenthetically, when I finish this prepared statement, I do have some suggestions predicated on my experience in the Congress and in the White House in reference to the Bicentennial which we celebrated in 1976, with the hope that you might look at maybe some modifications as to some of the approach that might be made in how you best get the process going once the legislation is enacted. If I may continue.

The maintenance of the common principles that animate our republic depend upon a knowledge and understanding of their roots and origins.

If we are to pass on to future generations an unimpaired legacy of liberty, we must as a Nation seize opportunities to rededicate ourselves to the principles that have made us the world's longest-lived democracy. The Bicentennial of the Constitution offers the occasion for this national reflection and rededication.

I have a few suggestions as you consider the form of commemoration activities. I urge you and others in the Congress to act expeditiously to draw together experts from a wide cross section of disciplines to form a Commemoration Commission. The considerable task of coordinating an enterprise to reach all America will need to be underway several years in advance of 1987–1989. I commend the Senate bill which you have all supported for contemplating an ap-

propriate balance between immediate goals of ceremony and celebration and lasting goals of education and scholarship, on the other. Although budget constraints, which you are more familiar with than I, do not permit the allocation of a great amount of Federal funds, I sense that you could justifiably rely upon private contributions to finance much of the work of the Commission. Finally, I would encourage you to give each of the branches of Government created by the Constitution a role in the Commission.

As long as we are discussing history, let me conclude with a final allusion to our past. One hundred ninety-four years ago today, your congressional predecessors were making their way over some muddy roads and along winding waterways to New York where, on March 4, they could convene the First Congress and later attend the inauguration of President George Washington. I encourage you to consider the contributions of that First Congress to the working traditions of this legislative body in the decade of the 1980's. Such reflections generally encourage those of us who have devoted much of our lives to public service to measure up to the visions of our predecessors. All America deserves a similar experience of national recommitment on the occasion of the Bicentennial of the Constitution.

As I said a moment ago, I would like to go beyond the prepared statement to make one or two other observations.

I was in the Congress in 1966 when the Congress took some action to establish a broad-based-50-member Commission for the planning of the celebration of our Bicentennial in 1976. It was a well-intentioned effort to incorporate people from all walks of life into the preparations for that magnificent day—July 4, 1976.

The Commission was established, people were appointed. They started their deliberations, but I must say that the progress from its establishment to about 1970 or 1971 was not one of the great efforts in the history of organizations in the Federal Government. I am not condemning anybody. I am simply saying that the size of the group and the lack of urgency probably contributed to a lack of progress in getting ready for this tremendous occasion in 1976.

Finally, it was recognized that that format, or that kind of an organization, was not one that could best plan, organize, execute what had to be done in preparation for July 4, 1976. It was too big a group, it was too diverse, it did not really have one person or some focal point where you could get things done. Finally, in desperation, a new setup was created, as I recall, about 1971 or 1972, and one of your colleagues was put in charge, Senator John Warner. Once there was a manager with a smaller group, then things began to fall into place. I happen to believe that what took place in the United States in 1976 from January 1 to the end of the year was one of the great 12-month periods in the history of our country.

It was appropriately a celebration of great occasion. The revised organizational setup took a situation that was not getting the job done, and the revised organizational setup got it done and as a result we had a tremendous year, which will be well remembered by those of us who were there but also by history as well.

I will be glad to answer any questions.

Senator HATCH. Thank you, Mr. President.

There will be 16 on this commission, four recommended by the House, four by the Senate, four by the Chief Justice, and four by the President. Thus the Commission acknowledges all three branches of the Government established by the Constitution.

Mr. President, when the Commission created by the legislation before the committee today is underway, do you see some way that perhaps we could continue to receive your counsel and leadership concerning the Bicentennial Commission?

President FORD. I am not looking for a job, Mr. Chairman. [Laughter.]

Senator HATCH. That is if we can play golf every now and then?

President FORD. Well, I am doing better. The best evidence is that I am hitting fewer spectators. [Laughter.]

Senator HATCH. But we are happy to see that you have had a good result from your knee operation.

President FORD. I will be very glad to assist in an unofficial way, but I think you need people on the scene who are able to contribute on a day-to-day basis more than I could. But if I could be helpful in an unofficial way, I will be glad to do so.

Senator HATCH. Thank you, Mr. President.

Senator DeConcini.

Senator DECONCINI. I do not know if you have had a chance to look at the legislation. The chairman pointed out 16-member Commission. Just your first blush in reaction to that, is that a sizable amount that is going to be too large in your experience based on your recent testimony? Do you have any commission?

President FORD. Well, I have not in detail studied the legislation. If my memory is correct, there are four appointed by the President, four appointed by the Senate, and eight appointed by the House.

Senator DECONCINI. No, four by the House and four by the Chief Justice.

President FORD. I see.

My only reaction to that is, yes, it is smaller than the 50 body that they established in 1966, but 16 is a lot of people to get together on a regular basis to manage something as important as this to our country's history. Most likely that all of these people will have other major responsibilities, whether it is the Congress or the executive branch or the judicial branch or otherwise. Despite the fact that they might have the best intentions, the best motives, it is pretty hard to get that kind of talent to take the time to manage something, to really plan something. You need one or two people who are going to devote 100 percent of their time to the planning and to the eventual execution.

Maybe you can do it with this group hiring someone or having it in the legislation that a director or executive should be nominated by the President, approved with the advice and consent of the Senate. You need a focal point of management which 16 people with all of the best of intentions cannot have.

Senator DECONCINI. Thank you, Mr. President.

Senator HATCH. Mr. Chairman, Senator Thurmond?

The CHAIRMAN. Mr. President, we are honored by your presence and I just have one question.

How do we appropriately balance celebration and ceremony, as you put it, with reflection and contemplation?

President FORD. I am not sure that we should duplicate what was done on July 4, 1976, with all the buildup that took place in every community and every State in the country. But there are things that I think ought to be highlighted around the country because this is truly an historic day in the history of the United States. It may be that it ought to be handled a little differently, and the things that ought to be done ought to be out of a different pattern, but every part of the country ought to know what 1787 meant because that is the day that our country really, in many respects, began its history. The events and the activities, Senator Thurmond, ought to come from the Commission of 16. It ought to come from the staff that I think has to devote 100 percent of its time to it.

The CHAIRMAN. Thank you very much.

Senator HATCH. Senator Leahy?

Senator LEAHY. I wonder if I might just follow up on that, Mr. President.

One of the concerns that I have as I go throughout the country, and I am sorry to say sometimes parts of my own State, is a lack of sense of history of a lot of people, especially concerning the Constitution. When I am asked by people coming from a small State like Vermont how many Senators come from a large State like California, for example, I get frustrated. But you think if we somehow try to emphasize, it may be a great undertaking, but somehow try to emphasize the Constitution in the schools of the country—whether through essay contests or course curricula, we would get some results.

Would that be a worthwhile effort?

President FORD. In my judgment, Senator Leahy, there is a great lack of recognition in our history books of the date in 1787. We concentrate on 1776.

Now, 1787, from the point of view of our Government, is just as important if not more so than 1776. So the educational community, I think, could benefit and our children could benefit if we did something out in our primary, secondary and higher education facilities in this particular situation.

I do not think our history books adequately emphasize the importance of 1787. This is a way I think it could be done.

Senator LEAHY. I absolutely agree. Thank you, Mr. President.

Senator HATCH. Thank you, Senator Leahy.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Mr. President, I would welcome your observations on one issue. Some of the discussion so far has been about the commemoration within the United States, and my thought goes to how we might portray the human rights which have been promoted by the Constitution on a worldwide basis. There is an enormous amount of propaganda circulating all the time. The issues are with us constantly. The State Department has a new public relations policy for most American values, and we have controversy about the Canadian films, the German elections are on the propaganda issues, of the nuclear matter, and the issue of human rights probably continues to be the greatest issue in the world today. Our Constitution has certainly been the most significant document in my judgment in the history of mankind, and how can we use this occasion to tell

the world about American values, to try to seek the other nations of the world to follow our prescription for democracy and constitutional government and the elevation of human rights?

President FORD. Well, I am very prejudiced. If you take all of the documents that are the foundation of our country, whether it is the Declaration of Independence, the Constitution, the Bill of Rights, and even the performance of our Government over 200 years, I do not think we have any apology to make in the field of human rights. We should be proud of that record. It is not perfect but I would like to lay our record alongside that of any other country in the history of the world, and our record would stand up pretty well.

I do not think we ought to apologize. We ought to talk about it affirmatively. Maybe what this legislation contemplates, commemoration of the signing of the Constitution and the actual initiation of our Government, ought to be used so that 1987 is a way to tell the world what our record is. I say again with recognition that we are not perfect it is a pretty good record. A good batting average and a lot better than any other that I know of.

So perhaps this is a vehicle that could be helpful in setting that forth to the world as a goal.

Senator SPECTER. Well, I would hope that we could use this occasion and these events to tell the world what we have done.

I had occasion to be in the Soviet Union in Moscow for the July 4th party last summer, and there was a very heavy emphasis on the regular revelry and the vodka and not very much, if any, on what we were commemorating on the Declaration of Independence. Perhaps with some thought, Mr. Chairman, and thoughts which we have expressed here, that concept could be developed to make this an event where we would promote the ideas of what constitutional government has meant for this country and what it could mean for the world.

President FORD. This is slightly a different point but you give me the opportunity to make a point that I do frequently, and I think it is an important one.

On November 2, 1982, in every one of our States, any person who was eligible to vote had an opportunity to make choices, and a lot of changes were made, and an awful lot of people exercised the right to vote privately.

Almost simultaneously, in November 1982, the Soviet Union, they had a change of leadership. In some very mysterious way, a new leader was selected to replace Mr. Brezhnev. Nobody knows how that process went on. Certainly nobody in Vladivostok or Leningrad or any place else, no person in the grassroots of the Soviet Union had one thing to say about who would be the next leader of the Soviet Union, not one. A handful of individuals in the Kremlin made a mysterious decision, and I think the contrast between our process on November 2 and the process that they utilized to pick a new leader illustrates very dramatically the difference between their government and our Government. Thank God we have ours. I think it is tragic that the Russian people have theirs.

Senator SPECTER. Thank you very much, Mr. President.

Thank you, Mr. Chairman.

Senator HATCH. Well, thank you, Senator Specter.

President Ford, we just want to again thank you for taking this time to be with us. We think it is a tribute to you and to this country that you care enough about the Constitution to appear here in the Congress. We know you do not take that kind of appearance lightly, and we are very grateful that you have chosen to appear before this subcommittee on this particular bill. We think that you have added a lot to this bill and its impetus in the Congress. Thank you so much.

President FORD. Thank you very much, Senator, and thank all of you for attending. I know you are very busy. It takes a big bite out of the day and I appreciate it. Thank you.

Senator HATCH. We sure appreciate you.

We will recess for just 1 minute so that we can shake hands with you on your way out.

[Applause.]

[Short recess.]

Senator HATCH. Sorry for the delay. I had a call from the floor and I had to take it.

Before we proceed to our next witness, I would like to state that the full Judiciary Committee has a meeting scheduled in this room at 11 o'clock so, in the interest of time, I am going to ask—I will order that, without objection, all written remarks of all of our witnesses will be placed in the record.

I would like to introduce our next witness who represents the American Bar Association.

The subcommittee is pleased to welcome Mrs. Betty Murphy. Mrs. Murphy is chairman of the ABA Committee on Labor and Employment Law, and a member of the Commission for Public Understanding of the Law. She is a personal friend of mine and, of course, I deeply respect her contributions to the legal profession and her efforts to uphold the Constitution.

I might mention that Betty Southard Murphy is a member of the national law firm of Baker and Hostetler which has offices in Washington, D.C., Cleveland and Columbus, Ohio, Denver, Colo., and Orlando, Fla. She was named Chairman of the National Labor Relations Board in 1975. President Ford said she was "the most qualified and best respected person" for the job.

I might add that during her chairmanship, the Board achieved a 30-percent increase in productivity and issued a record number of cases in the shortest period of time in the agency's history. Upon her resignation in 1979, she was praised by both labor and management for her outstanding contributions. She has received four other Presidential appointments as an active trial lawyer and, of course, has tried cases in Federal and State courts in some 20 States, and she has also argued in 9 of the 12 U.S. Courts of Appeal. I consider Mrs. Murphy an expert first amendment lawyer. A former reporter, she has handled many cases involving confidentiality of reporters' sources and has defended reporters and columnists in a number of libel actions.

Mrs. Murphy, we are happy to have you with us along with these other distinguished witnesses, and we will take your statement at this time. We hope that you will be able to summarize.

STATEMENT OF BETTY SOUTHARD MURPHY, ESQ., ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mrs. MURPHY. I will, Mr. Chairman.

On behalf of the American Bar Association, I want to express my appreciation to you and to the committee for the privilege of testifying here in support of this important legislation. It is an honor to follow President Ford today. As you are aware, I am also a member of the American Bar Association's Commission on Public Understanding of the Law.

My purpose today is to express the American Bar Association's support for meaningful educational programs during the commemoration of the Bicentennial of the public Constitution.

Our Founding Fathers knew full well the importance of education in a free society. Early luminaries, such as President Thomas Jefferson and President James Madison, forged explicit links between public understanding of the Constitution, the system of government it establishes, and the health of our democracy. As a result of this early commitment, virtually every State in the Nation mandates the study of American history and civics. However, recent studies have documented that the public has only a feeble understanding of their heritage and only a feeble understanding of what the Constitution is about.

It is the Constitution itself upon which American civic understanding should rest.

In 1979, the American Bar Association created the Commission on Public Understanding about the Law with the mandate to help citizens understand their rights and obligations under the law. In the same year, the ABA House of Delegates adopted a resolution encouraging the establishment of meaningful programs of education during the Bicentennial.

Mr. Chairman, the Commission's most cherished goal is to make this a decade devoted to constitutional literacy. Our organization, along with many others, believes that only extraordinary efforts on the part of all of us will reverse the ignorance, the apathy and the disillusion reflected in the studies I mentioned earlier.

We commend the committee and the Congress for initiating this important legislation, and we urge its speedy passage. Despite concerted efforts in the private sector, an objective as large and as meaningful as this cannot be and indeed should not be undertaken without Federal leadership. Federal leadership is appropriate because the Constitution is the law of the land and it embodies the principles and values which unite us as a Nation.

This legislation can serve to promote constructive public and private sector understanding in education. It is important to emphasize the pressing need for a multiyear effort grounded in educational activities and information.

Of course, as President Ford said earlier, symbolic appeals to patriotism and activities designed to remind us of the glorious days of our American Revolution and of the founding of our Republic are important. But I am here today, as the President was, to stress the need for Bicentennial education as well. In my prepared remarks, which I submit for the record, I quote Dr. Richard Berendzen's

views on the Constitution which I think are very meaningful and which I commend to you.

I believe, Mr. Chairman, that if we dedicate the remainder of this decade to constitutional literacy, it will be one of the greatest contributions we can make to our past—and to our future.

The American Bar Association stands ready to participate actively in this great effort. Thank you.

Senator HATCH. Thank you, Mrs. Murphy. Could I just ask you one question.

I know that the Bar Association is vitally interested in enhancing public awareness of the basic operations of our Constitution and of our Government as established by the Constitution.

Do you foresee any kind of an outreach program by the members of the bar in the high schools and the other elementary schools to teach basic understanding of the Constitution as part of our Bicentennial commemoration?

Mrs. MURPHY. Yes, Mr. Chairman. The American Bar Association of course does this already with its very fine Law Day program in which I think you were a part also when you were in private practice. But the Bar Association does plan to have an outreach program.

I sit on the board of four educational institutions myself. I know that each of these institutions is planning Bicentennial programs and they are starting now. So I think it is very appropriate that this legislation be passed as speedily as possible.

Senator HATCH. Thank you. I appreciate your excellent testimony here this morning and we appreciate your taking time from your busy law practice to be with us.

Mrs. MURPHY. Thank you.

Senator HATCH. Thank you, Mrs. Murphy.

[The prepared statement of Betty Southard Murphy follows:]

PREPARED STATEMENT OF BETTY SOUTHARD MURPHY

Mr. Chairman and Members of the Subcommittee:

My name is Betty Southard Murphy. On behalf of the American Bar Association, I want to express my appreciation to you for the privilege of testifying here today in support of this important legislation which will establish a Commission on the Bicentennial of the Constitution.

I am a member of the American Bar Association's Commission on Public Understanding About the Law and I am also a lawyer in private practice in Washington, D.C. My purpose today is to express the American Bar Association's support for meaningful educational programs during the commemoration of the Bicentennial of the Constitution of the United States.

Our Founding Fathers knew full well the importance of education in a free society. Early luminaries such as President Thomas Jefferson and President James Madison forged explicit links between public understanding of the Constitution, the system of government it establishes, and the health of our democracy. As a result of this early commitment to public understanding of government and the rights and responsibilities of citizenship, virtually every state in the nation mandates the study of American history and civics. However, studies in recent years have documented that the public has really only a feeble understanding of many important Constitutional guarantees and, at best, an imperfect understanding of the Constitution's living role in a democratic society.

It is the Constitution itself upon which American civic understanding should rest. As Richard Berendzen, President of the American University, recently noted: "In the last few years, the American people seem to have lost sight of themselves as a people, as a collective whole, as a nation. Rather, they have thought of themselves as individuals, often placing per-

BEST COPY AVAILABLE

sonal wants ahead of national needs. We should all understand that we are part of a larger, engulfing, living organism -- the United States itself. And our freedom -- even our right to be concerned about ourselves -- is derivative from the extraordinary nature of our nation.

"What is needed," President Berendzen continued, "is a rededication to nation as well as to self, and a renewed appreciation of the laws that make life here uniquely free. All Americans need to understand to cherish their heritage; the laws, the words that make it possible; in short, the Constitution."

The United States Constitution is, without doubt, a living document. It touches our lives every day. No society can remain free unless its citizens understand the need for freedom, the cause of freedom, and the document under which freedom is guaranteed.

In 1979 the American Bar Association created the Commission on Public Understanding About the Law with a mandate to help citizens understand their rights and obligations under the law, to foster an appreciation of the role of law in society, and to facilitate the more effective functioning of our citizenry. In the same year, the ABA House of Delegates adopted a resolution encouraging the establishment of meaningful programs of education commemorating the Bicentennial of the Constitution.

The Commission's most cherished goal is to make this a decade devoted to Constitutional literacy. Our organization, along with many, many others, believes that only extraordinary efforts will reverse the ignorance, disillusion, and apathy reflected in the studies I mentioned earlier concerning citizens' understanding and ability to be effective politically. With the cooperation of other professional and scholarly organizations, the American Bar Association is embarking on an exciting, multi-faceted program to raise understanding of the Constitution.

We commend the Committee and the Congress for initiating this legislation and urge its speedy passage. Despite concerted efforts in the private sector, an objective as large and as meaningful as promoting Constitutional literacy cannot and, indeed, should not be undertaken without federal leadership. And federal leadership is appropriate here because the Constitution is the law of the land and it embodies the principles and values which unite us as a nation.

Just as the Constitution itself establishes working relationships among the coordinate branches of government, between federal and state governments, and between the government and the people it serves, so too can this legislation uniquely promote constructive public and private sector activities to commemorate the Bicentennial.

It is important to emphasize the pressing need for a multi-year effort grounded in educational activities and information. Of course symbolic appeals to patriotism and activities designed to remind us of the glorious days of the American Revolution and of the founding of our Republic are important. But I am here today to stress the need for Bicentennial education as well.

I believe that if we dedicate the remainder of this decade to Constitutional literacy, it will be one of the greatest contributions we can make to our past -- and to our future. The American Bar Association stands ready to participate actively in this great effort. Thank you.

APPENDIX

Resolution of the House of Delegates

of the

American Bar Association

Adopted August, 1979

Be It Resolved, That public understanding about the Constitution, Bill of Rights, and the law generally should be recognized as a national educational priority of the coming decade;

Be It Further Resolved, That the American Bar Association encourages meaningful programs of education commemorating the Bicentennials of these documents; and

Be It Further Resolved, That the American Bar Association calls upon its legal colleagues, government officials, educational leaders, and the public to commit substantial energies and resources toward improving public understanding of our Constitution and Bill of Rights.

Senator HATCH. Our next witness is Chief Judge of the U.S. Court of Appeals for the Federal Circuit, Howard T. Markey.

In addition to his lengthy and extraordinary service to this country from his many positions of responsibility and leadership within the Federal Judiciary, Judge Markey served with distinction as the cochairman of the American Revolution Bicentennial Commemoration. He is among the most highly revered and respected of our dedicated Federal judges and we certainly are happy to welcome you to this committee, Judge.

I might add that only rarely in the history of this Republic have individuals who serve or who have served in all three branches of Government established by the Constitution gathered to discuss a policy for the Nation. Usually the dispersal of power effected by the framers of the Constitution has appropriately operated to keep representatives of various branches of Government separate.

So it is fitting that the event which draws former President Gerald Ford together with yourself as Chief Judge before the members of this Senate Committee, is the approaching anniversary of the creation of the various branches of Government.

So we think that your testifying here today along with President Ford certainly adds historical and constitutional significance to these hearings this day.

I might add that your reputation and your credentials are very high. Judge Markey graduated cum laude as editor in chief of the Law Review at Loyola University in Chicago, and getting a Master's Degree from John Marshall Law School. Judge Markey is also the first active judge to have sat with every Federal Court of Appeals. He has participated in over 1,200 cases and written opinions covering over 200 cases for all circuit courts in every field of law, in addition to over 1,600 cases and over 300 opinions for the Court of Customs and Patent Appeals.

Under Judge Markey's administration the court reduced its time to decide cases from 3 years to 7 months and did so with a self-reduced budget. I could go on and on with your credentials. But I just want to say to everybody here and for this record that I do not know of anybody who has done more to elevate the practice of the judgeship than you have. I certainly appreciate having you here today.

STATEMENT OF CHIEF JUDGE HOWARD T. MARKEY, U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Judge MARKEY. Thank you, Mr. Chairman. It would be an honor at any time to appear before this committee under your leadership. It is doubly an honor of course to follow President Ford and Commissioner Murphy. It is a hard act to follow. For that I am doubly or triply honored.

I am honored also, Mr. Chairman, at the outset, to present a letter to you and to the subcommittee from the Chief Justice of the United States. With your concurrence, I should like to add it now for the record.

Senator HATCH. Without objection, we will add that to the record.

Judge MARKEY. Thank you, Mr. Chairman.

I would be pleased to submit my written statement and merely perhaps offer one or two comments on it and then be open to questions.

If the chairman concurs, I would just ask that it be made a matter of record.

Senator HATCH. Without objection, we will make your complete statement a matter of record following your oral testimony.

Judge MARKEY. Mr. Chairman, the Judicial Conference which I have the honor to serve approved the purpose served by then S. 2671 at its meeting in September 1982. I do not here, of course, speak for the conference, so any shortcomings you may detect are my own alone.

I also had the pleasure of serving as coordinator of the Bicentennial of the Declaration. I can pretend, however, only to experience, not to expertise.

In that role, like many others, I had the benefit of working under the far seeing leadership of the Chief Justice of the United States who, as the chairman knows, for over half a decade now has been recommending at numerous places and opportunities, an early and encompassing start on planning for the Bicentennial of the Constitution.

In that respect, Mr. Chairman, I noted your courtesy in adding two of his speeches to your own eloquent remarks on the Constitution when S. 2671 was introduced.

It is of course fitting that a Commission be established to assist in encouraging and coordinating the Nation's celebration of the 200 years of the Constitution. It is important that it be done early. A Commission is needed now, and the sooner the better.

If all the hard work—and it will be hard work—and particularly the time to do it all well is to be accomplished, the Commission should start operating tomorrow morning if it were possible.

Mr. Chairman, as a Federal judge I neither advocate nor oppose any particular provisions of any particular proposed legislation.

The Judicial Conference, however, looked upon S. 2671 as containing many safeguards and therefore approved the purpose expressed therein in its 1982 meetings.

I was particularly pleased to learn, Mr. Chairman, of the plan to have the Commission terminate its activities in December 31, 1989, which of course will provide an opportunity to celebrate the actual ratification and perhaps the operation under the Constitution of the First Session of the First Congress.

Of course, it may seem trite for someone who has been exposed to the law, I think some of us here this morning, to come and advocate a Commission to celebrate the Constitution. It is a little bit like being for motherhood. Those of us who work at the heart beat of a free society—the law—could be expected to support a Commission to honor the Constitution in its 200th year.

Many of us would like to see September 17 become a national holiday. It is a little shattering to see us celebrate National Raisin Week and not September 17.

It would be great if there were a spontaneous uprising or outpouring of the people to celebrate the 200th anniversary. It would be more than welcome but such a hope may be forlorn and there-

fore a Commission is needed to provide the pre-planning to make such a celebration useful.

I will move ahead, because as I indicated, I just merely want to comment. Perhaps one comment on the statement is that it is pretty wordy.

Senator HATCH. It is an excellent statement.

Judge MARKEY. If I may be excused, Mr. Chairman, only on the excuse that for 30 years if you spend your time talking about something it is very hard to shut it off when you get a chance to put it down on paper.

I am sure if I were talking about my wife I would be equally wordy after 40 years. So I will leave that part of the middle part of the statement for the record and move toward the end anyway.

It certainly is appropriate that the Federal Government play a role in the celebration of its own birth. However, this Commission should not itself do all the educating or the commemorating.

As you indicated, Mr. Chairman, in your remarks, there should be no party line of the Commission on what is most important in the Constitution. While the American society is searching, seeking, and not settled in some areas, the Constitution has served as an "anchor to windward" and has made McCauley so wrong when he said, "The American Constitution is all sail and no anchor."

In the statement, Mr. Chairman, I refer to three organizations: Convention II, Project 87, and the Association of 13 Original States. They are already in the field and already doing yeoman work toward the concentration and celebration of the Constitution. I had not at that point thought of mentioning what Commissioner Murphy mentioned about the American Bar Association's activities. Of course, there are other organizations that could turn their efforts in this direction. They are already devoted to education about the Government. They are not in the statement because I did not think of them, but they are Presidential Classroom and Close Up.

I think a birthday party ought to be a celebration. We do not normally take the person whose birthday is being celebrated and find all the things wrong with him. There are promises in the Constitution still to keep, as President Ford mentioned a moment ago.

It is a little like the fellow who said, "I hate name droppers, as I said to the queen last night." I can now, for the rest of my life, say "When I testified right after President Ford * * *."

But as he mentioned, Mr. Chairman, we are not perfect, of course, and I think we sometimes may study our failures, which we should do, but not to the exclusion of studying our successes.

There is much to learn about what we have done right in the past, as well as what we may not have done completely.

So the Commission will have a substantial menu for its activities.

If I may make a few suggestions here, just off the top of the head, and for down the road in any event, after the Commission is formed.

I would leave, Mr. Chairman, with one or two fundamental points.

I think one of the most important things is to help the American people, the individual citizens of the United States, all of them, everyone of them, see what the Constitution means to them in their

daily living, their daily activities. Those values might be emphasized.

Last week I joined thousands of Americans in traveling across the country to Los Angeles, Chicago, and Philadelphia. Not one of us even thought of asking the permission of a Government official. The day before yesterday, millions of Americans in this land needed no one's approval to go to the church of their choice. Last month in company with many others, my little family moved our home and joined a new organization in our new neighborhood, all without the leave of any other person. Millions of us read in our papers this morning what free editors and free reporters and free columnists wanted to tell us, not what some government thought it was safe to let us know. A moment ago there was reference, and I digress again, to other lands. I think in any such approach to other lands, as mentioned by Senator Specter, and I mentioned it elsewhere in the statement, it would be well, I think, to let the people of the world know what it could mean to them in their daily lives to live under the Constitution or something like it.

I pose a number of questions here, Mr. Chairman, in the statement. I mean none of them prejoratively and I suggest no answers. Even if I thought I knew them I would not be suggesting them. But it is for the people, through their elected representatives, to find the answers that they deem best, while those of us who are judges try to keep the shield, try to keep the brute at bay by upholding the law.

I mention a number of projects that the Commission might take on, a number of questions that the studies might answer.

Lastly, Mr. Chairman, I would suggest that the Commission members will be very lucky people indeed, for they will have the opportunity to work with a most marvelous product. A concept underlying the Constitution, that human beings can govern themselves, is the newest, shiniest, most revolutionary idea in the history of the world. It is the oldest written Constitution and it is still so new. The Constitution was born this morning in history's eye.

To digress again from the statement, in 1976, you heard this morning, I happened to have been in Rome. Our guide took us around the city and I was bragging about our country celebrating the 200th year of the Declaration of Independence. Finally, the guide could not stand it any more and so the next time he showed us a building he said, "This is one of our newest buildings, it is only 3,000 years old."

The Constitution is still so new that most of the 4 billion people in the world have never heard of it.

So the work of the Commission is terribly, terribly important. I wish you Godspeed, you and the committee, Mr. Chairman and the Congress in enacting such legislation as you deem appropriate to launch a Commission on its happy chore. As I indicated in the statement, I hope all the people, to which the Constitution belongs after all, will participate. May the Commission aid the people in achieving one of the purposes for which the framers established the Constitution and for which the people, as its words say "do"—not "did"—do establish the Constitution every day while it lives. That purpose is to secure the blessings of liberty to our posterity.

19-789 O - 83 - 6

Thank you, Mr. Chairman. I will be glad to answer any questions.

Senator HATCH. Thank you, Judge Markey.

I will submit some questions in writing. I have to go over to make this rollcall vote, so I am going to recess for a few minutes. We appreciate your fine statement and the testimony that you have given here today, as well as all that you do for the Judiciary in this country. Thank you so much.

So we will recess a few minutes until I get back.

[Recess.]

[The prepared statement of Chief Judge Howard T. Markey and letter from Chief Justice Warren E. Burger follow:]

PREPARED STATEMENT OF CHIEF JUDGE HOWARD T. MARKEY

HONORED BY YOUR INVITATION, MR. CHAIRMAN, I AM PLEASED TO APPEAR BEFORE THE COMMITTEE TODAY IN SUPPORT OF CONGRESSIONAL AUTHORIZATION OF A COMMISSION ON THE BICENTENNIAL OF THE CONSTITUTION.

I AM HONORED ALSO TO DELIVER A LETTER FROM THE CHIEF JUSTICE OF THE UNITED STATES, AND RESPECTFULLY REQUEST ITS ENTRY INTO THE RECORD OF THIS HEARING.

THE JUDICIAL CONFERENCE OF THE UNITED STATES, ON WHICH I HAVE THE PLEASURE OF SERVING, APPROVED OF THE PURPOSE TO BE SERVED BY S.2671 AT ITS LAST MEETING IN SEPTEMBER 1982. THOUGH I DO NOT PRESUME TO REFLECT THE ENTIRE THINKING OF THE CONFERENCE, OR OF ITS CHAIRMAN, THE CHIEF JUSTICE OF THE UNITED STATES, I WAS PRESENT WHEN THAT LEGISLATION WAS FAVORABLY REVIEWED. NEVERTHELESS, I SHOULD EMPHASIZE THAT I DO NOT HERE REPRESENT THE CONFERENCE. I AM HERE TODAY ON MY OWN--AND ANY SHORTCOMINGS YOU MAY DETECT ARE MINE ALONE.

THOUGH I HAD THE PLEASURE OF SERVING AS COORDINATOR OF BICENTENNIAL PROJECTS BY THE JUDICIARY IN CONNECTION WITH THE BICENTENNIAL OF THE DECLARATION, I PRETEND ONLY TO EXPERIENCE, NOT EXPERTISE. IN THAT ROLE, AS IN SO MANY OTHERS, I HAD THE BENEFIT OF WORKING UNDER THE FAR-SEEING LEADERSHIP OF THE CHIEF JUSTICE, WHO FOR OVER A HALF-DECADE NOW HAS BEEN RECOMMENDING AN EARLY AND ENCOMPASSING START ON PLANNING FOR THE BICENTENNIAL OF THE CONSTITUTION. IN THAT RESPECT, MR. CHAIRMAN, I WAS NATURALLY PLEASED TO NOTE YOUR COURTESY IN INCLUDING TWO OF THE CHIEF JUSTICE'S EARLY PUBLIC SPEECHES ON THE SUBJECT, ALONGSIDE YOUR OWN ELOQUENT REMARKS ON THE

BEST COPY AVAILABLE

CONSTITUTION. WHEN YOU INTRODUCED S.2671 IN THE LAST CONGRESS. I ALSO NATURALLY NOTED THE SUPPORTING REMARKS OF SENATORS THURMOND AND MATHIAS.

IT IS EMINENTLY RIGHT AND FITTING THAT A COMMISSION BE FORMED TO ASSIST IN ENCOURAGING AND COORDINATING PART OF THE NATION'S CELEBRATION OF THE 200TH YEAR OF THE CONSTITUTION. INDEED, IT IS ALREADY LATE IN THE DAY TO BEGIN THE TASK OF ADEQUATE PLANNING, RESEARCHING, AND ORGANIZING FOR A CELEBRATION WORTHY OF ALL THE CONSTITUTION MEANS AND HAS MEANT. THAT WILL BE - AND SHOULD BE - SEEN AS A BIG JOB. WITHOUT HARD THINKING, BUDGETING, AND THOROUGH PLANNING - AND THE TIME TO DO IT ALL WELL - THE CELEBRATION COULD BE HAPHAZARD, AD HOC, AND UNLIKELY TO MAKE AMERICANS PROUD. IT MIGHT ALL TOO EASILY BE FORGOTTEN BY THE FOLLOWING WEEK'S FOOTBALL GAME. A COMMISSION IS THEREFORE NEEDED. IT IS NEEDED NOW.

AS A FEDERAL JUDGE, MR. CHAIRMAN, I NEITHER ADVOCATE NOR OPPOSE ANY PARTICULAR PROVISIONS OF ANY PARTICULAR PROPOSED LEGISLATION. I CAN, HOWEVER, REPORT THAT WHEN THE CONFERENCE VIEWED S.2671 IT APPEARED IMPRESSIVE IN A NUMBER OF AREAS. IT SEEMED TO GUARD AGAINST WHAT SOME MIGHT FEAR TO BE A "CAPTURING" OR POLITICIZING OF THE COMMISSION - AND AGAINST PARTISANSHIP AS WELL - BY ITS PROVISIONS FOR APPOINTMENTS BY ALL THREE BRANCHES, AND BY ITS PROVISION FOR ELECTION OF ITS CHAIRMAN BY COMMISSION MEMBERS THEMSELVES. IT ALSO SEEMED TO GUARD AGAINST A TAKEOVER OF THE ENTIRE CELEBRATION BY A COMMISSION, AND AGAINST ANY TENDENCY TO "LET THE FEDS DO IT ALL," BY LIMITING THE COMMISSION'S PURPOSE TO PROMOTING AND COORDINATING COMMEMORATIVE ACTIVITIES OF THE STATES AND THE PEOPLE - ALONG WITH A LIMITED NUMBER OF FEDERAL PROGRAMS. IT WISELY PROVIDED FOR REASONABLE STAFFING AND SUPPORT. IT

BEST COPY AVAILABLE

REQUIRED THAT THE COMMISSION'S WORK ENLIST THE COOPERATION AND PARTICIPATION OF ALL SEGMENTS OF OUR SOCIETY AND THAT THE CONTRIBUTIONS OF ALL SEGMENTS OVER THE YEARS BE RECOGNIZED - A MOST NECESSARY AND IMPORTANT REQUIREMENT, FOR THE CONSTITUTION WOULD NOT HAVE LIVED THIS LONG, AND WILL NOT LIVE INTO THE FUTURE, WITHOUT THE UNDERSTANDING AND SUPPORT OF THE AMERICAN PEOPLE.

LASTLY, MR. CHAIRMAN, I WAS PARTICULARLY PLEASED TO LEARN THAT A COMMISSION WOULD EXPECT TO TERMINATE ITS ACTIVITIES ON DECEMBER 31, 1989. THAT WILL, I PRESUME, FACILITATE INCORPORATION OF THE ACTUAL RATIFICATION OF THE CONSTITUTION AND PERHAPS THE OPERATION UNDER IT OF THE FIRST SESSION OF THE FIRST CONGRESS.

I AM SOMEWHAT AWARE OF THE HECTIC, HURRIED, AND HARRIED SCHEDULE OF THE CONGRESS - BUT IF AUTHORIZING LEGISLATION CAN BE FAIRLY PROMPTLY ENACTED, A COMMISSION MAY BE ENABLED NOT ONLY TO SUBMIT A COMPREHENSIVE REPORT WITHIN TWO YEARS AND BEFORE BECOMING OPERATIONAL, IT MAY ALSO BE ABLE TO COMPLETE ALL OF ITS WORK BY THE END OF 1989.

IN A VERY REAL SENSE, IT SEEMS TRITE TO COME BEFORE THIS COMMITTEE IN SUPPORT OF A COMMISSION TO COORDINATE A CELEBRATION OF THE BICENTENNIAL OF THE CONSTITUTION. THOSE WHO SHARE THE PRIVILEGED JOY OF WORKING AT THE HEARTBEAT OF A FREE SOCIETY - THE LAW - LAWYERS, LAW PROFESSORS, JUDGES, LEGISLATORS, AND PRESIDENTS - HAVE LEARNED FIRST HAND TO REVERE THE CONSTITUTION FOR THE CHARTER OF LIBERTY IT IS. BECAUSE FREEDOM MAY BE VIEWED AS CONCEIVED IN THE DECLARATION AND BORN IN THE CONSTITUTION, I HAVE ON OCCASION CALLED THE CONSTITUTION "FREEDOM'S BIRTH CERTIFICATE." IT MAY BE EXPECTED, THEREFORE,

BEST COPY AVAILABLE

THAT THOSE DEALING DAILY WITH THE LAW WOULD SUPPORT FORMATION OF A COMMISSION TO CELEBRATE THE BIRTH OF THE CONSTITUTION AS COMPLETELY AS THEY WOULD MOTHERHOOD.

INDEED, MANY WHO HAVE SPENT A PROFESSIONAL LIFETIME STUDYING AND PROBING FOR THE VERY SOUL OF THE CONSTITUTION WOULD OPT FOR MAKING SEPTEMBER 17 AN ANNUAL HOLIDAY, AND SHUDDER WHEN THAT DAY GOES BY UNMENTIONED WHILE THE NATION CELEBRATES, FOR EXAMPLE, NATIONAL RAISIN WEEK. THOSE WHO HAVE HAD A LIFETIME LOVE AFFAIR WITH THE CONSTITUTION, PERHAPS NOT SURPRISINGLY, WOULD TREASURE A HOPE, PERHAPS FORLORN, THAT ITS 200TH YEAR WOULD PRODUCE A SPONTANEOUS NATIONWIDE OUT- POURING OF REDEDICATION, STUDY, AND CELEBRATION - EVEN IF NO COMMISSION WERE EVER FORMED. AS I INDICATED, SUCH SPONTANEITY WOULD BE GRATIFYING, BUT LIKELY TO BE SPASMOTIC AND SHORT-LIVED, ABSENT THE CAREFUL PRE-PLANNING A COMMISSION CAN PROVIDE.

IN ALL EVENTS, THE AMERICAN POPULATION IS NOT, THANK PROVIDENCE, COMPOSED ENTIRELY OF THOSE DEALING DAILY WITH THE LAW. ALL THE JUDGES, AND CONGRESSMEN, AND PRESIDENTS WHO EVER LIVED COULD NOT TOGETHER PRESERVE THE CONSTITUTION IF THE PEOPLE - OR A CONTINUING MAJORITY OF THEM - FORGOT THEIR BIRTHRIGHT - IF THE AMERICAN HERITAGE OF A CONSTITUTIONAL REPUBLIC BE ABANDONED BY THE PEOPLE. NOR CAN THE CONSTITUTION LIVE AND BREATHE IF RESTRICTED TO COURTROOMS AND THE MARBLE HALLS OF THIS BUILDING. IT NEEDS THE SUNSHINE PRESENT IN THE DAILY LIVES OF THE PEOPLE AND IN EACH OF THESE UNITED STATES. THOUGH MANY IN GOVERNMENT ARE SWORN TO UPHOLD AND DEFEND THE CONSTITUTION, EVERY CITIZEN ELOQUENTLY UPHOLDS THE CONSTITUTION JUST AS MUCH AS ANY OF US WHEN HE OR SHE RESPONSIBLY RECOGNIZES THE CONSTITUTIONAL RIGHTS OF FELLOW CITIZENS EVERY DAY.

YET WITHIN OUR MARVELOUSLY DIVERSE SOCIETY ARE SOME WHO MAY HAVE BEEN TOO BUSY, OR SATISFIED, OR COMFORTABLE, OR PREOCCUPIED, OR ECONOMICALLY PRESSED, TO HAVE HAD THE OPPORTUNITY TO LEARN VERY MUCH ABOUT THE CONSTITUTION, ITS DRAMATIC GENESIS AND ITS REMARKABLE ROLE IN EACH OF OUR LIVES. EVEN SO, THE CONSTITUTION BELONGS TO ALL THE PEOPLE - AND THE STATES - AND TO THE ASSOCIATIONS THE PEOPLE HAVE FORMED IN EXERCISING THEIR RIGHT TO ASSEMBLE RECOGNIZED IN THE FIRST AMENDMENT. IT IS CERTAINLY NOT THE EXCLUSIVE PROPERTY OF JUDGES, OR OF THE CONGRESS, OR OF THE FEDERAL GOVERNMENT.

AS CHIEF JUSTICE MARSHALL PUT IT, "THE PEOPLE MADE THE CONSTITUTION, AND THE PEOPLE CAN UNMAKE IT. IT IS A CREATION OF THEIR OWN WILL AND LIVES ONLY BY THEIR WILL." WE HAVE ALL READ OCCASIONAL NEWS ACCOUNTS IN WHICH AN ENTERPRISING REPORTER ASKS THE MAN-IN-STREET WHETHER CERTAIN RIGHTS NOW RECOGNIZED IN THE CONSTITUTION SHOULD BE GUARANTEED; AND MANY OF THOSE QUERIED ANSWERED, "NO!" AT HEARINGS LAST YEAR, PROFESSOR MORRIS CITED A DECLINING KNOWLEDGE OF THE CONSTITUTION ON THE PART OF HIGH SCHOOL GRADUATES. THAT IS NOT EVIDENCE THAT THE PEOPLE ARE EITHER PREPARING OR WILLING TO UNMAKE THE CONSTITUTION, OF COURSE. IT MAY BE TAKEN AS A WARNING, HOWEVER, THAT THE CONSTITUTION CAN BE UNMADE SUBTLELY - AS MUCH BY NEGLIGENCE AND NEGLECT, AS BY DEVICE AND DESIGN. IT MAY ALSO BE TAKEN AN AN INDICATION THAT A MAJOR ROLE FOR A COMMISSION WOULD APPEAR TO BE THE ENCOURAGEMENT OF LEARNING ABOUT THE CONSTITUTION AND ITS TOWERING MAGNIFICENCE AMONG THE GOVERNMENTAL CHARTERS IN HISTORY.

ON THE OTHER HAND, THERE ARE ALREADY AMONG US PRIVATE ORGANIZATIONS LIKE "CONVENTION II," WHICH LISTS 80 MEMBERS OF THE HOUSE AND SENATE OF BOTH MAJOR PARTIES ON ITS FOUNDERS

BEST COPY AVAILABLE

COMMITTEE. IT IS, I UNDERSTAND, DEVOTED TO EDUCATION ABOUT THE CONSTITUTION AND HAS JUST COMPLETED ITS 8TH ANNUAL MINI-ENACTMENT OF WHAT WE NOW CALL THE CONSTITUTIONAL CONVENTION OF 1787. OTHER ORGANIZATIONS, SUCH AS "PROJECT 87" AND THE "ASSOCIATION OF THE THIRTEEN ORIGINAL STATES," ARE ALREADY CONDUCTING PROGRAMS RELATED TO THE BICENTENNIAL OF THE CONSTITUTION.

THOUGH THE FEDERAL GOVERNMENT SHOULD CERTAINLY BE ENTITLED TO PLAY A ROLE IN CELEBRATION OF ITS BIRTH, I WOULD NOT FOR A MOMENT SUGGEST THAT A GOVERNMENT COMMISSION SHOULD ITSELF DO ALL THE EDUCATING OR COMMEMORATING. ON THE CONTRARY, MR. CHAIRMAN, AS INDICATED IN YOUR PRINTED INTRODUCTORY REMARKS IN THE LAST SESSION, THERE SHOULD BE NO "PARTY LINE" ON WHAT IS MOST IMPORTANT IN THE CONSTITUTION. PARTICIPATION IN CELEBRATION OF THE CONSTITUTION'S 200TH ANNIVERSARY WILL I HOPE BE AS WIDESPREAD AS POSSIBLE - SOME UNDER THE AEGIS, ENCOURAGEMENT, AND SUPPORT OF THE COMMISSION - SOME ENTIRELY INDEPENDENT OF THE COMMISSION. OURS IS STILL AND OFTEN IN MANY WAYS A SEARCHING AND A SEEKING, NOT A SETTLED, SOCIETY. AS AMERICANS HAVE WORKED OUT THEIR DESTINY OVER THE PAST 194 YEARS, HOWEVER, THE CONSTITUTION HAS SERVED US ALL AS AN "ANCHOR TO WINDWARD," AND HAS PROVED MCCAULEY SO WRONG WHEN HE SAID "THE AMERICAN CONSTITUTION IS ALL SAIL AND NO ANCHOR."

THE CONSTITUTION'S BIRTHDAY PARTY, LIKE A BIRTHDAY PARTY GIVEN TO HONOR A PERSON, SHOULD BE AN EXPERIENCE IN JOYOUS APPRECIATION OF ALL THAT IS GOOD IN THE HONOREE. THAT THERE MAY BE PROMISES IN THE CONSTITUTION STILL TO KEEP WARRANTS AN EFFORT TO SPREAD KNOWLEDGE OF THOSE PROMISES; IT IS NOT A REASON TO IGNORE OUR SUCCESSES AND CONCENTRATE ONLY ON OUR FAILURES.

There is almost a limitless supply of grist for the Commission's mill. Studies of the Constitution, and the underlying principles familiar to its Framers, to which Senator Mathias has referred, can greatly aid our society as it seeks answers to a plethora of questions in the present milieu.

I have often found safe and sane the view that "if it ain't broke, don't fix it." So many historical and still contemporary values of the Constitution are enjoyed by so many citizens in the ordinary events of every day living as to be easily taken for granted. Those values might well be emphasized. Last week, for example, I joined thousands of Americans in traveling across the country to Los Angeles, Chicago, and Philadelphia, and none of us even thought of asking a government official for permission. Day before yesterday, millions of the fortunate people in this beloved land needed no one's approval to attend the church of their choice. Last month, in company with many others, my little family moved our home and joined a new organization in our new neighborhood, all without leave of any other person. Millions of us read in our paper this morning what free editors, free reporters, and free columnists wanted to tell us, not what some government thought it was safe to let us know.

Objective studies can contribute much and the outcome of a study cannot and should not be predicted or precluded. A study might, for example, look at whether we may have grown so busy picking up the golden apples from the tree of the Constitution as to have forgotten how to fertilize the roots. Another might compare the Constitution's division of governmental powers with the presence of many more Judges, titled Administrative Law Judges, in the Executive Branch as there are in the Judicial

BRANCH, AND THE PRESENCE OF REGULATORS IN THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES, WHO ARE NOT TITLED ADMINISTRATIVE LAW CONGRESSMEN BUT WHO NONETHELESS PROMULGATE NUMEROUS REGULATIONS HAVING THE FORCE OF LAW. HAVE THOSE DEVELOPMENTS BECOME NECESSARY IN THE COMPLEXITY OF OUR LARGER AND INCREASINGLY TECHNOLOGICAL SOCIETY? HAVE THE BURDENS ON THE CONGRESS, THE OFFICE OF THE CHIEF JUSTICE, THE SUPREME COURT, AND THE EXECUTIVE, BEEN INCREASED SO FAR BEYOND THOSE INTENDED BY THE FRAMERS AS TO EXCEED THE CAPACITY OF HUMAN BEINGS ADEQUATELY TO CARRY? HAVING SET OUT TO BE GOVERNED BY LAWS AND NOT MEN, ARE WE IN DANGER OF BECOMING A NATION OF NOTHING BUT LAWS? HOW HAS THE CONSTITUTION SERVED AFTER LOSS OF THE VIRTUAL HOMOGENEITY OF THE THREE MILLION AMERICANS WHO RATIFIED IT? TO WHAT EXTENT HAS THE CONSTITUTION INFLUENCED GOVERNMENTAL CHARTERS IN OTHER LANDS?

IT IS EASY TO POSE QUESTIONS. I MEAN NONE PEJORATIVELY AND I SUGGEST NO ANSWERS. EVEN IF I THOUGHT I KNEW SOME ANSWERS, IT WOULD BE PRESUMPTIVE TO PUT THEM FORTH. IT IS FOR THE PEOPLE TO FIND AND ADOPT THROUGH THEIR ELECTED REPRESENTATIVES THE ANSWERS THEY DEEM BEST - WHILE THOSE OF US WHO ARE JUDGES TRY TO KEEP THE BRUTE AT BAY BY UPHOLDING THE LAW.

MANY PROJECTS WILL, I AM SURE, BE PLANNED OR IMPLEMENTED OR ENCOURAGED BY THE COMMISSION. A FEW IMMEDIATELY COME TO MIND: PUBLICATION IN ECONOMICAL PAPERBACK OF THE FEDERALIST PAPERS; PUBLICATION OF A SET OF FEDERALIST PAPERS AS THEY MIGHT BE WRITTEN IN 1987; MOVIES AND STAGE PLAYS DEPICTING THE CONSTITUTIONAL CONVENTION, ITS METAMORPHASIS AND ITS GRAND COMPROMISES; FILMS DRAMATIZING THE CRACKERBARREL AND MARSHALL-HENRY DEBATES ON RATIFICATION, AND THE RATIFICATION PROCESS ITSELF IN EACH STATE; A CONTINUING TV SERIES RELIVING

THE YEARS 1787, 1788, AND 1789, AND ECLIPSING "ROOTS," "SHOGUN," AND "THE WINDS OF WAR" IN STYLE AND PUBLIC INTEREST - THERE IS DRAMA ENOUGH, FOR IT WAS A CLOSE THING WHETHER WE WOULD HAVE THE CONSTITUTION AT THAT TIME; SCHOLARSHIPS TO HIGH SCHOOL AND COLLEGE STUDENTS FOR OUTSTANDING PAPERS ON THE CONSTITUTION; FILMS SIMILAR TO "GIDEON'S TRUMPET" ON OTHER GREAT CONSTITUTIONAL CASES DECIDED BY THE SUPREME COURT; PUBLICATION OF BI-LINGUAL TRANSLATIONS OF THE CONSTITUTION.

WHATEVER CELEBRATIONAL PROJECTS THE COMMISSION, INDEPENDENT GROUPS, AND INDIVIDUALS MAY SELECT, I WILL PRESUME TO EXPRESS TWO HOPES: (1) THAT GENERAL PRINCIPALS, WHICH ARE BY DEFINITION PERMANENT, BE PERMITTED TO SHINE THROUGH ALL THE TECHNOLOGY - THE TYPEWRITERS, TELEPHONES, AIRPLANES, COMPUTERS, TELEVISION, AUTOMOBILES, ELECTRIC LIGHTS, CUISINARTS, MICRO-OVENS, SPACE SHUTTLES, AND GENETIC ENGINEERING - THE FRAMERS NEVER DREAMED OF; AND (2) THAT AT LEAST MOST PROJECTS BE DESIGNED TO PRODUCE LASTING PRODUCTS THAT WILL GO ON PLEASING, AND EDIFYING, AND EDUCATING MANY FUTURE GENERATIONS OF AMERICANS AND INTERESTED PERSONS OVERSEAS AS WELL.

IN A SENSE, I ENVY THE COMMISSION AND THOSE WHO WILL SERVE ON IT, FOR IT WILL HAVE A MARVELOUS PRODUCT WITH WHICH TO WORK. A CONCEPT UNDERLYING THE CONSTITUTION - THAT HUMAN BEINGS <u>CAN</u> GOVERN THEMSELVES - IS THE NEWEST, SHINIEST, MOST REVOLUTIONARY IDEA IN THE GOVERNMENTAL HISTORY OF THE WORLD. SOON TO BE 200 YEARS OLD, IT IS THE OLDEST WRITTEN CONSTITUTION. YET IT IS STILL SO VERY NEW! THE CONSTITUTION WAS BORN THIS MORNING IN HISTORY'S EYE. INDEED, IT IS SO NEW THAT I WOULD DARESAY A VAST MAJORITY OF THE FOUR BILLION PEOPLE IN THE WORLD HAVE NEVER HEARD OF IT. I SUSPECT THE SAME IS TRUE OF A CONCEPT THAT ANIMATED THE DECLARATION - THAT HUMAN

BEINGS ARE ENDOWED BY A CREATOR WITH RIGHTS EQUAL AND UNALIENABLE. ADDING FLESH AND BLOOD TO THE DECLARATION'S EXPRESSIONS OF INDEPENDENCE AND LIBERTY, THE CONSTITUTION AND THE PEOPLE'S ADHERENCE TO IT ENABLED THE AMERICAN REVOLUTION TO BE MANAGED, TO SUCCEED WHERE MANY OTHERS HAD FAILED. A COMMISSION WOULD HAVE A GLORIOUS QUEST - TO HELP MAKE THE CONSTITUTION LIVE IN THE MINDS AND HEARTS OF THE AMERICAN PEOPLE.

GODSPEED, THEREFORE, MR. CHAIRMAN, TO THE CONGRESS IN ENACTING SUCH LEGISLATION AS IT DEEMS APPROPRIATE TO LAUNCH A COMMISSION SOON UPON ITS HAPPY CHORE. MAY SUCH COMMISSION AID IN ACHIEVING ONE OF THE PURPOSES FOR WHICH THE FRAMERS ESTABLISHED THE CONSTITUTION - AND FOR WHICH THE PEOPLE "DO ESTABLISH" IT EVERY DAY WHILE THE CONSTITUTION LIVES - "TO SECURE THE BLESSINGS OF LIBERTY TO ... OUR POSTERITY."

I WILL BE PLEASED, MR. CHAIRMAN, TO ANSWER IF I CAN ANY QUESTIONS YOU OR THE COMMITTEE MAY WISH TO PUT.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 4, 1983

Dear Mr. Chairman:

I understand your Subcommittee will be holding hearings on the creation of a Tripartite Commission on the Bicentennial of the Constitution of the United States. As you know, I have been advocating the establishment of such a commission for a good number of years now. Indeed, as long ago as September 1978 in a lecture at the National Archives, I emphasized that "it is not too early to begin thinking and planning to be sure that what we do will be an appropriate recognition of the importance of the event." I feel even more strongly about the importance of the formation of the Bicentennial Commission and regret that Congress was unable to do so in its last session.

Not to belabor the obvious, time is getting short if we are to plan and realize an appropriate celebration of the Bicentennial of the Constitution. I therefore respectfully urge you, your Subcommittee, and Congress to enact legislation on this matter as soon as possible.

Cordially,

Warren E Burger

Honorable Orrin G. Hatch
Chairman, Subcommittee on the Constitution
United States Senate
Washington, D.C. 20510

Senator HATCH. I apologize but I got to the floor and found that we are in the middle of a national shipping bill and the crucial amendment happened to be mine. We had to modify that amendment and get a compromise right there on the floor. They could not do it without me, so we modified it, we compromised and I presented it. It is now going to be part of the basic law. It is in a very real sense, part of the constitutional process. These delays are part of it as well.

I apologize to you and we will continue with our next witness who happens to be the very eminent Prof. Richard B. Morris.

Professor Morris, who, of course, is a widely regarded historian from Columbia University, is the immediate past president of the American Historical Association.

Professor, your scholarship and your recognition of the need for a Bicentennial Commemoration has contributed greatly to the development of our plans. I want you to know you have been a personal inspiration to me and to members of this committee.

As a devotee of your writing, I have to admit that it is really an honor and pleasure to have you with us here today.

We will put your full statement in the record and if you could summarize your statement, I would appreciate it.

STATEMENT OF RICHARD B. MORRIS, PROJECT '87, AMERICAN HISTORICAL ASSOCIATION AND AMERICAN POLITICAL SCIENCE ASSOCIATION, AND PROFESSOR OF HISTORY EMERITUS, COLUMBIA UNIVERSITY

Mr. MORRIS. Thank you very much, President Ford, Senator Hatch, and distinguished members of the Senate Judiciary Committee.

Twice before I have had the privilege of testifying before Committees of Congress on bills to establish a Commission To Commemorate the Bicentennial of the Constitution. A year and a half ago I testified before this Subcommittee on the Constitution of the Senate Judiciary Committee on two excellent bills introduced by Senator Helms and Senator Mathias. Somewhat earlier I was also asked for my views by the Subcommittee on Census and Population of the House Committee on the Post Office and Civil Service. Thus my personal views, along with those of the organization I represent, Project '87, have already been given fairly full representation on the record.

I now address myself not only to S. 118 but also to remind this committee that the hour grows ever later and that there is a sense of urgency in these hearings. This is now March of 1983, a year especially noteworthy because on September 3 of this year, 200 years ago, a Definitive Peace was signed in Paris between John Adams, Benjamin Franklin, John Jay, and Henry Laurens, the American peace commissioners, and David Hartley, on behalf of His Britannic Majesty. Now, that Definitive Peace, one of the great diplomatic triumphs of our history, if not the greatest, recognized American independence and acknowledged a huge body of territory to be under the soverignty of this Nation. While the treaty gave us independence, it did not create that sense of national unity and purpose or infuse the Continental Congress under the Articles of

Confederation with the capacity and energy to act in the national interest, to protect our mariners from capture on the high seas, to remove the British Army from our frontier, to give us free access to the Mississippi, or to enhance our commerce on the high seas. All this was accomplished almost by magic by the adoption of the Federal Constitution, that great charter of rights and creator of our unique federal system, and honored today as the most durable written Constitution of the modern world.

In short, the hour is getting very late. We have less than 4 years to plan and implement a national program which will not only salute a document and its creators, those great masters of statecraft, but also enlighten the people of this Nation about a set of ideas and ruling principles that still govern our society, give it internal cohesion, and legitimate its authority as a beacon for free peoples everywhere.

It is a source of gratification to me and to the two organizations I am privileged to represent, the American Historical Association and the American Political Science Association, that S. 118, a product of Senator Hatch and his distinguished associates, so appropriately embodies the best features of the previous bills that have been drawn for this purpose, and has special virtues that should be singled out for comment:

One. It properly recognizes the tripartite nature of our Government as set up under the Constitution, that separation of powers that the authors of "The Federalist" remind us as the essence of free government. The Chief Executive appropriately has the power of appointment, but, except for the remaining presumably public members, he is confined to choices recommended to him by the two branches of Congress and the Chief Justice, who also serves on the Commission.

Two. It provides for a compact committee of 16 members, and here I disagree with President Ford, I feel this is a compact committee, avoiding what in some past commemoration commissions have been overloaded and unmanageable bodies.

Three. It recognizes that the Constitution is an instrument of "We the People" by providing that the members of the commission shall select a chairman from among its members.

Four. By providing for the termination of the Commission on December 31, 1989, it makes it possible for the Commission to embrace in its commemorative plans not only the adoption and ratification of the Constitution but the establishment of the new national government—the election of the first President and Vice President and their respective inaugurations, the meeting of the First Congress, and the appointment of the first Chief Justice and five Associate Justices of the Supreme Court of the United States. Since one of the very first actions of the First Congress was to enact the Bill of Rights moved by James Madison, it makes it possible to include in the commemoration the Bill of Rights, generally considered an integral part of the original Constitution.

I should hope that S. 118 could embody a few minor clarifications which I humbly suggest:

One. That the Commission's responsibility and jurisdiction extend to the Commonwealth of Puerto Rico and the territories of the United States.

Two. I should hope that the Commission's responsibility for citizenship education would be a task that would be clearly understood to be entrusted to nonprofit scholarly and educational bodies and the great public and private educational systems of the States. I am sure that there is no intention of the drafters of this bill that an agency or commission of the Government should be charged with putting its imprimatur on a particular interpretation of so highly complex a document as the Constitution, but that instead it would expect the Commission to encourage systematic and intensive study of the development of the Constitution, what it means today, and how our constitutional structure functions.

We in Project '87 have, from the beginning of our organization, been especially conscious of the need for better citizenship education and have considered the bicentennial of the Constitution an ideal occasion for focusing on that subject. I have in my hand, for example, a detailed paperback edited by a foremost educator, Howard D. Mehlinger, entitled "Teaching About the Constitution in American Secondary Schools," sponsored and published under the auspices of Project '87.

Lastly, I find missing in S. 118 a proposal explicitly authorizing the Commission to make grants to nonprofit entities along the lines of Senate Joint Resolution 33, section 9(1). Otherwise I would need some clarification on whether such granting authority is included in the present bill authorizing the Commission to "make contracts." On this point I am confident that I speak for learned societies and educational and patriotic groups in expressing the desire that such a clarification can be included. Such a clarification actually was included in the statute that I personally proposed and section 3 of that particular statute, which was on the Congressional Record in the last hearing where I testified in tne fall—I believe in the fall of 1981.

I might say, on our own modest scale, with the support of private foundations and the National Endowment for the Humanities, we have taken initial steps in that direction, through conferences, research fellowships, educational projects at every level, the proposed use of audiovisual techniques, and a quarterly magazine, and which I have here a dummy, which will not only have authoritative articles on the Constitution but will serve to publicize bicentennial activities nationwide in an effort to encourage and coordinate such projects.

We shall, accordingly, support with enthusiasm a Commission of the kind that your bill will create.

I congratulate you on preparing such a bill.

Senator HATCH. I think if anybody deserves credit for being the inspiration for this bill, it certainly is you. I just want you to know how much your help has meant to us.

Now, professor, do you see many private activities taking place within historical societies and universities within this Bicentennial period?

Mr. MORRIS. Yes.

Senator HATCH. Do you think it would be a wide spectrum of activities?

Mr. MORRIS. To give you an example, the Bill of Rights program—four TV programs—which was operated by the School of Journalism at Columbia—in fact, I think you participated——

Senator HATCH. I participated in a couple of those.

Mr. MORRIS. So that these things are being planned. There is a human rights program for overseas which also is planned at Columbia University. But I am convinced that the initiative which was taken by Congress will undoubtedly stimulate the private sector to participate, as it should, and there will be many programs that should be coordinated. My own problem is that in the hope that there can be a Commission which can effectively coordinate the programs and that we can rethink the problems of the Constitution and have the kind of decent and profound discourse about the Constitution which this country needs.

Senator HATCH. Thank you. We appreciate it.

Now you are in the process of writing a book, are you?

Mr. MORRIS. Well, yes; I am writing two books dealing with the Constitution.

Senator HATCH. That is tremendous.

Mr. MORRIS. The Jay volume which will deal with Jay and the Federalist Papers and another dealing with Jay and the courts.

Senator HATCH. So you have the first two out?

Mr. MORRIS. The first two are out. The third is about to go to press. That goes to 1789. The fourth will cover Jay's Chief Justiceship, the Jay Commission to England and the Governorship. That will be the last.

Senator HATCH. They are signal works and you have been kind enough to send me the first two. I hope you will send me the second two.

Thank you so much.

Our final witness today will be Mr. Paul Dembling, president of the Federal Bar Association.

Mr. Dembling is senior partner in the Washington office of the law firm of Schnader, Harrison, Segal & Lewis, and former general counsel for the General Accounting Office.

Since your association has special ties to the Federal Government, whose birthday this celebration will commemorate, we look forward to hearing from you on what programs you have planned.

We have with us several other individuals who have contributed heartily to this effort. I cannot mention them all but Dr. Robb Higgins of the Center for Federalism and Boris Feinman of Convention II deserve special note, also Maeva Marcus and Cynthia Harrison, all of whom have been in the committee room today.

Now I have a problem. They just called another vote. If you will put your complete statement in the record, of course, it will help complete what I think is an excellent record on this matter.

STATEMENT OF PAUL G. DEMBLING, PRESIDENT, FEDERAL BAR ASSOCIATION

Mr. DEMBLING. Thank you very much.

It is a special pleasure to appear before the committee as president of the Federal Bar Association. With me is Joseph Ross, the association's first vice president.

The Federal Bar Association is composed of some 15,000 attorneys presently or formerly employed by the U.S. Government, as well as attorneys whose private practice is primarily focused on Federal law. As the organized bar of Federal attorneys, the Federal Bar Association has been firmly committed during its 63-year history to preserve, protect, and defend the Constitution.

I have provided the committee with a prepared statement and a resolution which was adopted by our governing body, the National Council, and I ask that they be made a part of the record.

Senator HATCH. Without objection, they will be part of the record.

Mr. DEMBLING. In summary, Mr. Chairman, the Federal Bar Association endorses the enactment of S. 118 and urges your speedy approval of this bill.

Senator HATCH. Thank you very much.

Could you tell me the plan the Federal Bar Association has in mind to dramatize for its members and the American public this Bicentennial?

Mr. DEMBLING. We have already started a series of actions through our 100 chapters throughout the country and through our young lawyers division. As you put it earlier, there has been an outreaching throughout the organization, throughout the country. We have also, with our Capitol Hill chapter, established a program where we will go into the local schools and educational institutions to speak about the Bicentennial. It is my pleasure to recognize the activities of two counsel of this committee who are active in the Capitol Hill chapter, Bob Fiedler and Randy Rader.

Senator HATCH. We are very happy to have had you here. I think these hearings, although bifurcated because of the votes on the floor, have been very essential and hopefully we will get this bill through the Congress this year. Should we do so, I think all of you will have played a significant pivotal role in having done so.

We look forward to working with you in the future in commemoration of the bicentennial of the Constitution of the United States.

We think this is one of the most important things this country can do and we appreciate what you have contributed.

Thank you very much.

With that, we will recess the committee.

[Whereupon, at 11:50 a.m., the committee recessed to reconvene subject to the call of the Chair.]

[The prepared statement and resolution submitted by Mr. Dembling follow:]

Prepared Statement of Paul G. Dembling

Mr. Chairman,

It is always a pleasure to return to the halls of Congress, and it is a special privilege to appear today as the President of the Federal Bar Association. The Federal Bar Association is composed of 15,000 attorneys presently or formerly retained by the United States Government as counsel in one capacity or another, as well as those attorneys whose private practice is primarily focused on federal law. As the organized bar of federal lawyers, the Federal Bar Association has been firmly committed throughout its sixty-three year history to preserve, protect and defend the Constitution of the United States. As for myself, I have been a member of the Association since 1954. I joined the federal government when I was an attorney with the National Advisory Committee for Aeronautics, the precursor to the National Aeronautics and Space Administration, serving as General Counsel to that agency, concluding my service to the United States as General Counsel to the General Accounting Office in 1978. I am currently the partner in charge of the Washington office of the law firm of Schnader, Harrison, Segal & Lewis of Philadelphia and Washington.

The Federal Bar Association endorses the enactment of S. 118, a bill to establish a Commission on the Bicentennial of the Constitution. I was very pleased when a predecessor bill passed the Senate in the last Congress and equally disappointed when the House failed to act on the measure. I hope that S. 118 will enjoy greater success in this Congress.

Appended to this statement is the resolution adopted by the National Council of the Federal Bar Association, its governing body, endorsing the predecessor to S. 118, and a report submitted to the National Council at the time of our consideration of the measure.

The Congress quite appropriately finds that "the maintenance of the common principles that animate our Republic depend upon a knowledge and understanding of their roots and origins". The Constitution of the United States, more than any other framework for government, "enunciates the

limitations on government, the inalienable rights of man, and the timeless principles of individual liberty and responsibility".

There is no better time to recommit ourselves and our nation to this Constitution than upon its bicentennial. Few governments have survived the march of time in such good stead as our own and this is largely due to the wisdom of the Founding Fathers. The Framers could not have foreseen conditions as they exist today, but, nonetheless, they established a form of government, and guarantees of individual rights, which seemed correct for their more halcyon days, but which have proven to be no less necessary or convenient in our own time. In the words of George Santayana, "He who does not understand history is doomed to repeat it."

Accordingly, I commend you for this effort and the Federal Bar Association will be pleased to support the endeavors of Congress in passing this legislation and the Commission to be established thereby.

With our unwavering support for the principles of establishing the Commission under S. 118 firmly in mind, let me mention some actions regarding the bicentennial of the Constitution which the Federal Bar Association has already undertaken. In this context, I note that § 6(c) of the bill would direct the Bicentennial Commission to seek the cooperation, advice, and assistance of bar associations, among other groups. I believe that the Federal Bar Association is especially qualified to provide such support to the Commission. In anticipation of enactment of the legislation, and with the approval of our governing body, I have taken the following preliminary steps:

(1) In view of the importance cited in § 6(b) of the bill of the relationship and historical development of the three branches of the Government, I have asked our Capitol Hill Chapter, our General Counsels Committee, and our Committee on an Independent Judiciary to begin planning activities founded on the Congress, the Executive and the Judiciary, respectively. It is my hope that their attention to the doctrines of separation of powers and the system of checks and balances and the special

provinces of each branch can be brought together in different ways. In addition to commemorative ceremonies within each branch, these groups will consider formulating citizenship education activities, commissioning scholarly papers for publication either in our Journal or as separate treatises, and other appropriate activities.

(2) I have urged each of our one hundred chapters throughout the country to begin planning commemorative activities during September of each year, and especially during September of 1987, the actual bicentennial of the completion of the drafting of the Constitution.

(3) I have asked our Philadelphia Chapter to consider hosting special commemorative activites in 1987, with the possibility of holding our national convention meetings in that city.

(4) I will recommend to our National Council at its meeting in May, 1983, the creation of a select committee of the Association to oversee all bicentennial activities. In recognition of the mandate in § 6(b) of the bill, that the Bicentennial Commission give due consideration to the contributions of diverse ethnic and racial groups, one of the subcommittees of this select committee will be directed to focus on this important area. I will further direct that select committee, upon passage of legislation creating the Bicentennial Commission, to give all appropriate support to its efforts.

Again, Mr. Chairman,, and members of the subcommittee, I am pleased to urge, on behalf of the Federal Bar Association membership, your speedy approval of S. 118.

THE ESTABLISHMENT OF A PRESIDENTIAL COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

RESOLUTION 83-1

Adopted by Resolution of the National Council, November 6, 1982

WHEREAS, one of the fundamental aims of the Federal Bar Association is to support the Constitution of the United States;

WHEREAS, the Constitution of the United States was proposed by the Federal Convention of 1787, sitting at Philadelphia, from May 30, 1787 through the adoption and referral of a draft Constitution of the United States on September 17, 1787;

WHEREAS, the Bicentennial of the Constitution of the United States will be celebrated in less than five years hence;

AND WHEREAS, bills proposing to establish a Presidential Commission on the Bicentennial of the Constitution of the United States are being considered in Congress;

NOW, THEREFORE, BE IT RESOLVED, that the Federal Bar Association supports the establishment of a Presidential Commission on the celebration of the Bicentennial of the Constitution of the United States;

FURTHER RESOLVED, that the President of the Association refer questions of how the Federal Bar Association can assist in the celebration of the Bicentennial of the Constitution of the United States to appropriate committees of the National Council;

AND FURTHER RESOLVED, that the President communicate the views of the Association to the appropriate governmental officials in any suitable manner.

REPORT TO ACCOMPANY A RESOLUTION SUPPORTING THE ESTABLISHMENT OF A PRESIDENTIAL COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

After a divisive war of revolution with Great Britain and the establishment of a government under the Articles of Confederation, the United States found that the Articles were defective in several ways, particularly in the want of an ability to raise revenue and in the protectionist trade legislation enacted by the various States. The States therefore sent delegates to Philadelphia in the Spring of 1787 to consider what alterations would improve upon the form of government. The result of those debates was the drafting of the United States Constitution. At the behest of the Convention of 1787, the Continental Congress submitted the draft Constitution to the various States for ratification under the terms included in Article VII. After substantial debates in the various States, the government was formed in the Spring of 1789.

We are now approaching the 200th anniversary of the events founding the United States government under which we serve and to which we owe allegiance. Much as we celebrated the Bicentennial of the American Revolution in 1976, it behooves us to commit our resources to celebration of the Bicentennial of the Constitution of the United States.

Senator Hatch has introduced S. 2671, 97th Cong., 1st Sess., to establish a Presidential Commission similar to that established for the observance of the Bicentennial of the American Revolution. The Commission would (1) plan and develop appropriate activities, (2) encourage private and governmental

organizations to participate in activities, (3) coordinate the activity and (4) act as a clearinghouse for information. Appropriate authority and funding is also provided. On August 20, 1982, the Senate Committee on the Judiciary favorably reported this bill, with amendments. S. Rep. 97-535, 97th Cong., 2d Sess. (1982). After further amendment on the floor, S. 2671 was passed by the Senate on October 1, 1982.

H.R. 2164 (by Cong. St. Germain) and H.R. 6861 (by Cong. Rodino) would establish a similar commission and have been referred to the House Committee on Post Office and Civil Service. When Congress reconvenes on November 29, 1982, it is expected the S. 2671 will also be referred to the House Committee on Post Office and Civil Service.

The resolution proposed supports enactment of legislation to establish a Presidential Commission on the Bicentennial of the Constitution. As a function of the Federal Bar Association to support the Constitution and our professional understanding, as well as public perception, of the Constitution, the Association should support the enactment of such legislation.

In addition, the resolution authorizes the President to refer questions of how the FBA can assist in the celebration of the Bicentennial of the Constitution to appropriate committees in the National Council. In giving the President this authority, the planning for the Bicentennial can be accomplished with the greatest expedition.

Executive Committee of the National Council
Council on the Administration of Justice
Capitol Hill Chapter

APPENDIX

PREPARED STATEMENT OF WILLIAM P. BUTLER ON BEHALF OF THE CONSTITUTION COMMEMORATION STUDY GROUP

Mr. Chairman and members of the Subcommittee, I am William P. Butler, a member of the Constitution Commemoration Study Group and Director of Washington Activities for the Harris/Ragan Management Corporation. I am pleased to have this opportunity to comment on S.118 as it relates to the duties of the Commission and the role of the Federal Government.

The Constitution Commemoration Study Group was organized in late 1981 on a privately-funded basis to bring to the attention of the Federal Government the need for national leadership in planning for this most significant commemoration. Our review clearly showed a tendency for efforts at that time to follow the path that led to the 1976 bicentennial, even down to the same faulty organizational formula. We also noted the absence of fresh ideas or creative approaches on how the bicentennial of the Constitution might be shaped or directed.

All commemorations, as we have come to know, are important moments to take stock -- moments to see where we've been and where we want to go. But they are more than that as well. Commemorations are politically neutral events which permit us to accomplish things that otherwise might attract partisan problems. Commemorations are also splendid opportunities to enlighten as well as entertain. Why is it, then, that other than bicentennial insiders few remember anything from 1976 but the parade of Tall Ships?

The answer to that question can be found in how well the plans are laid for any national commemoration. With that sole objective in mind, our Study Group undertook an intensive effort from November 1981 until March 1982 and produced a report, "WE THE PEOPLE . . .", which addresses the planning issues and policy options facing the Federal Government in determining its participation in the commemoration of the bicentennial of the Constitution and the Bill of Rights. Since the report is concise, I request consideration for its inclusion in the record of this hearing.

The principal conclusions of this study are:

1. The Federal government ought to be involved only with its overall role in the commemoration.

2. The Federal government's plan for participation should be developed by a new national commission consisting of public officials and private citizens chosen by the heads of the legislative, executive, and judicial branches of government.

3. Implementation of the detailed plan should be the responsibility of a separate and already existing Federal agency.

BEST COPY AVAILABLE

The Study Group not only believes that a strenghtened Federal Council on the Arts and Humanities is appropriately positioned for this task, but suggests that it can be given the additional role of coordinating all future Federal involvement in commemorative activities.

4. The Bicentennial plan ought to be completed before the 1984 election so that implementation can begin at the outset of the new presidential term in 1985.

5. The commemorative period should get underway with a one-time Federal holiday on September 17, 1987 and close with another one-time Federal holiday on December 16, 1991 - the Monday after the 200th anniversary of the ratification of the Bill of Rights.

6. The first 18 months of the commemorative period - September 17, 1987 to April 30, 1989 (the date of the founding of the Federal government) - might be a time to draw public attention to the American system of governance, while the latter part of the period - May 1, 1989 to December 16, 1991 - might be focused on the individual rights enjoyed by Americans.

7. In the interest of saving time and money, the logo employed during the American Revolution Bicentennial ought to be adjusted for use with this commemoration.

8. Because significant new Federal government funding is probably unlikely, several ways to stimulating private financing to complement available public revenues should be studied.

While S.118 addresses some of these conclusions, the Subcommittee should give careful consideration to limiting the work of the proposed Commission to the planning function alone. Senator John W. Warner of Virginia strongly supported this position in his letter of August 2, 1982 to the Honorable Strom Thurmond, Chairman of the Committee on the Judiciary. Based on Senator Warner's earlier experience as Administrator of the American Revolution Bicentennial Administration, he stated,

> "One of the principal problems with the 1976 effort was the designation of a single organization to both plan and manage the commemoration. From the time the American Revolution Bicentennial Commission presented its report in 1970 until its demise in 1974, the Commission attempted, unsuccessfully, to implement recommendations without specific authority or the funds to do the job. The proposed Commission of the Bicentennial of the Constitution will face a similar hiatus until the President and the Congress agree on the appropriations necessary to fund the commemoration."

Senator Warner also commented on the inappropriateness of a commission to implement this commemorative program. He believed the President could assign responsibility to an existing agency within the Executive Branch to implement any of the recommendations of a commission. I might add that this action would save taxpayers' dollars. It should also be kept in mind that many of the Federal agencies will undertake certain activities for the Constitution's commemoration because it is part of their mission. The National Archives and Records Service of the General Services Administration, the Department of Justice, the National Endowment for the Humanities, and the Smithsonian Institution come readily to mind. What was missing in 1976 and what is now awaited is the leadership to coordinate these and any other new Federal initiatives into a coherent and cohesive program that leaves something of significance as a lasting reminder for generations to come.

BEST COPY AVAILABLE

We believe a well-selected Commission should address the planning issues and options; prepare and submit its report as quickly as possible; and step aside for the President and the Congress to move ahead on implementation. The need for any Board or oversight group could be considered, as Senator Warner also suggested, at the time specific plans are approved.

To help the commission transact its business, this Sub-Committee should consider amending Section 4 of S.118 to provide for either 15 or 17 members in order to avoid tie votes. My personal preference is for 15 members to save time and money.

In our view, and despite the loss of a year's lead-time for planning purposes, a limited-purpose commission is still a viable option under this proposed legislation. Regardless of the approach taken, national attention will focus on the plan presented by the commission. Its merits and faults will be debated and the President and the Congress will have to decide which recommendations and plans make it through the lengthy, Federal budget process.

The planning task is extremely important because of the wide range of interests to be considered. It will be no easy task. For many, this commemoration has greater intrinsic importance than the 1976 bicentennial of the American Revolution. This commemoration deals with the basic rules by which our society has continuously and democractically governed itself for almost 200 years -- a feat achieved by no other republic in the history of the world.

The need for a continuing organization to plan and oversee the entire commemorative period is less important than the need for a clear and early delineation of the Federal Government's plans for its own activities. This planning needs to be "fast-tracked" because it will influence to a great extent involvement by the States, the private sector and the international community. Based on the experience of the 1976 bicentennial, all of these sectors want to know as early as possible what the Federal Government plans to do so decisions can be made on what they will undertake to support or complement the Federal efforts. The opportunity to bring together significant, non-Federal resources must NOT be lost as was the case in 1976.

Finally, we strongly urge the Subcommittee to amend S.118 to extend the commemorative period through 1991 to cover the bicentennial of the Bill of Rights. When most people think about the Constitution, their thoughts generally turn to the network of individual rights protected and guaranteed in the Bill of Rights which were not formally added to the constitutional framework until December 15, 1791 with the ratification of the first ten amendments.

Dr. Richard B. Morris, who is scheduled to testify at this hearing, advocated a commemorative period through 1991 in his very thoughtful presentation before this Subcommittee on September 17, 1981. We support his recommendation with two final points: First, it will eliminate the need for a separate effort to plan the bicentennial of the Bill of Rights which would most likely be undertaken and, secondly, it improves the overall balance of public attention to both documents.

I wish to thank the Subcommittee for the opportunity to present the views of my colleagues, Donald R. Lawrenz, Sr. who is Chairman of the Best Plans Company, Inc. and Godfrey Harris who is president of the Harris/Ragan Management Corporation.

BEST COPY AVAILABLE

TESTIMONY OF THE HONORABLE SILVIO O. CONTE

AT THE SENATE CONSTITUTION SUBCOMMITTEE HEARING ON S. 118 -- A BILL

TO CREATE A COMMISSION TO PLAN FOR AND DEVELOP A CELEBRATION FOR THE

BICENTENNIAL OF THE UNITED STATES CONSTITUTION, TUESDAY, 1 MARCH 1983

MR. CONTE: Mr. Chairman and Members of the Subcommittee, I want to commend every one of you here today for so quickly holding hearings on legislation which I feel is very important -- creation of a commission to plan for the world's most important birthday party: the two-hundredth birthday of the United States Constitution. Last year, I introduced similar legislation during the lame duck session, but due to time constraints, we were unable to see that bill brought to the floor. The 117 co-sponsors that I had for that legislation, however, gives you some idea of the support for the concept.

September 17, 1787 is less than five years away. In order for any commission to fully study the events leading up to the Constitution's ratification -- the Mount Vernon Convention, for example, we need to pass legislation as quickly as possible. Sometimes, I think, we tend to forget the importance of this date. Our nation's real birthday is September 17. July 4, 1776 was the date that the Declaration of Independence was signed, and who can ever forget those eloquent challenges: "We hold these truths to be self-evident: that all men are created equal, that they are endowed by the Creator with certain unalienable rights, and that among these are life, liberty, and the pursuit of happiness."

Thus, the Declaration provided the end goal of what thirteen separate and distinct colonies would and should become. The Constitution provided the means to achieve these goals. Now, two hundred years since the date that document was signed, we should have the resources and the abilities to see how far we have come to achieve these purposes. This Commission will provide the resources and the abilities to do just that.

On the centennial of the Constitution, President Grover Cleveland said:

> If the American people are true to their sacred trust, another centennial day will come, and millions yet unborn will inquire concerning our stewardship and the safety of their Constitution. God grant that they may find it unimpaired; and as we rejoice today in the patriotism and devotion of those who lived one hundred years ago, so may those who follow us rejoice in our fidelity and love for Constitutional liberty.

Mr. Chairman and Members of the Subcommittee, let us begin now to live up to that sacred trust that Grover Cleveland spoke of in 1887. Let us pledge that millions of Americans yet unborn will celebrate the tricentennial of this historic document that goves hope and faith to all of the world.

That small band of Americans who formed this nation almost two hundred years ago was blessed with a vision of what this great land of ours could become. And so they drafted a document that has proven to be nearly flawless; and one hundred and ninety five years later, the same challenges of that Constitution control this nation.

There are three branches of government, but the Constitution is designed so that the real power does not rest with any one brancn, but rather in the tension between the three branches.

There are rights to a free press and free speech -- rights not granted by the government to the people, but rather by the people to the government. And of all the Constitutions in this world, that is what makes our truly unique. And that is why it is lasted and endured.

Mr. Chairman, President Reagan spoke of such a vision in his second State of the Union Address in January. He said:

> If we care what our children and our children's children say of us, if we want them one day to be thankful for what we did here in these temples of freedom, we will work together to make America better for our having been here -- not just in this year or this decade, but in the next century -- and beyond.

And so, Mr. Chairman, I feel it is imperative that we begin to plan now for the birthday of this document -- for it is our birthday as well; the birthday of our nation. By the passage of this bill, we will be demonstrating to the people of all the world how firmly and strongly we believe that this nation truly is, as Abraham Lincoln said, "the last, best hope of man on earth."

Thank you, Mr. Chairman.

Convention II Inc.

FOUNDERS COMMITTEE

Boris Feinman, Founder and Chairman - NY
Representative Richard L. Ottinger - NY
Senator Daniel Patrick Moynihan - NY
Senator S.I. Hayakawa - CA
Representative Leo C. Zeferetti - NY
Representative Walter E. Fauntroy - DC
Representative Floyd Spence - SC
Senator Mark Hatfield - OR
Representative Peter W. Rodino Jr. - NJ
Representative Carroll A. Campbell Jr. - SC
Representative Bill Hughes - NJ
Representative Bill Gradison - PA
Representative Silvio O. Conte - MA
Senator Jennings Randolph - WV
Senator Orrin G. Hatch - UT
Representative Jack Kemp - NY
Senator Alfonse D'Amato - NY
Representative Newt Gingrich - GA
Representative James J. Howard - NJ
Representative Jim Weaver - OR
Senator Christopher J. Dodd - CT
Senator Dale Bumpers - AR
Representative Mickey Edwards - OK
Representative Shirley Chisholm - NY
Representative Claude Pepper - FL
Representative Linda Boggs - LA
Senator Spark M. Matsunaga - HI
Representative John J. Rhodes - AZ
Representative Sidney R. Yates - IL
Representative Robert L. Livingston - LA
Senator Dennis DeConcini - AZ
Representative G. William Whitehurst - VA
Senator Paul E. Tsongas - MA
Representative Mario Biaggi - NY
Representative William J. Clay - MO
Representative Peter A. Peyser - NY
Senator James Abdnor - SD
Representative John Edward Porter - IL
Representative James V. Hansen - UT
Senator George J. Mitchell - ME
Representative Austin J. Murphy - PA
Representative Eldon Rudd - AZ
Senator Bill Bradley - NJ
Senator William Cohen - ME
Representative Harold S. Sawyer - MI
Senator Alan J. Dixon - IL
Representative James L. Nelligan - PA
Representative Lynn Martin - IL
Representative John LaFalce - NY
Representative Olympia J. Snowe - ME
Representative Cardiss Collins - IL
Senator Harrison "Jack" Schmitt - NM
Representative Thomas J. Downey - NY
Representative Edwin B. Forsythe - NJ
Senator Arlen Specter - PA
Senator Charles E. Grassley - IA
Representative Robert Garcia - NY
Representative Chris Smith - NJ
Senator Howell Heflin - AL
Representative Trent Lott - MS
Representative Dan Glickman - KS
Representative Jim Wright - TX
Representative Steve Gunderson - WI
Representative Bob Edgar - PA
Representative Bill Ratchford - CT
Senator David Pryor - AR
Representative Ron Wyden - OR
Representative Charles Hatcher - GA
Representative Daniel Akaka - HI
Senator Ted Stevens - AK
Representative Tom Lantos - CA
Representative Charles F. Dougherty - PA
Senator Howard Cannon - NV
Representative Hamilton Fish, Jr - NY
Representative Daniel Lungren - CA
Representative Toby Moffett - CT
Representative Larry DeNardis - CT
Senator Dave Durenberger - MN
Representative Lee H. Hamilton - IN
Representative Arlen Erdahl - MN
Representative Paul Simon - IL

Ronald Insana, Esq. Law Resource Officer

James A. Savard, Chairman
National Advisory Council

C. Timothy Leighton
President and Chief Executive Officer

Please respond to:

* National Headquarters
300 Third Street, NE #1
Washington, DC 20002
(202) 543-8000

* Office of the Founder
130 Highbridge Road
New Rochelle, New York 10804
(914) 633-6922

* National Advisory Council
1007 NW B Street
Grants Pass, Oregon 97526
(503) 476-8429/9928

STATEMENT BY BORIS FEINMAN

Founder, Convention II

Re S. 118

To the Senate Judiciary Committee's Subcommittee on the Constitution

March 1, 1983

Mr. Chairman and distinguished Senators:

I wish to express personal support as a private citizen for the bill to establish a commission for the commemoration of the Bicentennial of the Federal Constitution, and to offer a proposal for the makeup of the commission.

The Constitution is a political document fashioned by the passion and power of the people, serving as the living blueprint for the conduct of the people's affairs. In its content and brevity and adaptability to change it is a tribute to the genius of the Founding Fathers. However, the Founding Fathers did not explicitly foresee the evolution of the two-party partisan political system which immediately became dominant in the functioning of the Federal Government. As a result the traditions and the folklore of the birth of the Republic do not accord high place to politics and politicians. This seeming anomaly has caused the emergence of strong national currents of disdain for politicians and indifference to participation in the selection processes of government.

The strength of these currents poses a threat to democratic government. The legitimacy and value of the political parties needs to be confirmed at the highest level by including on the commission the Chairs of the Republican and Democratic national organizations. Additionally, their inclusion will leaven a probable perception of the Bicentennial as primarily scholarly, academic, legalistic, bureaucratic, and remote. They will add the populist flavor which is vital to the joyful celebration of the birth of the Law of the People.

BEST COPY AVAILABLE

CSF Southeastern University
CENTER FOR THE STUDY OF FEDERALISM
501 Eye Street, S.W., Washington, D.C. 20024 (202) 544-1789

STATEMENT BY W. ROBERT HIGGINS, Ph.D.

Director, Center for the Study of Federalism

Re S. 118

To the Senate Judiciary Committee's Subcommittee on the Constitution

March 1, 1983

Mr. Chairman and distinguished Senators:

As America approaches the Bicentennial of the drafting, ratifying, and enacting of the Constitution and Bill of Rights, it is vital that American citizens understand that Constitution, the government it frames, and the processes it engenders. Almost 194 years ago today, our predecessors elected representatives who gathered in New York City to organize the two Houses of Congress and the attend the inauguration of President George Washington. They were beginning a new venture, but they were also continuing a movement toward personal freedom which began with the Magna Carta. In establishing the Bicentennial Commission for the Constitution NOW, you are catalyzing the efforts to follow and build upon that path today, and facilitating for every American a better appreciation of where we as a nation have been and where we as a nation are going.

Although the Constitution is part of a series of charters guaranteeing person freedom and citizen rights which goes back more than one thousand years, it is also a unique document. In it the Founding Fathers enunciated for the first time the concept of popular sovereignty, stating that the power of the state rests with the people and that, therefore, the ministers of government owed their allegiance back to those individuals who elected them. The Constitution for the first time in history rested the government upon the governed. For this reason, the United States is strong only so long as the people are aware of their important role in the operation of the government, and responsibly exercise that role, among others.

Throughout the early years of our nation's history, there were few external threats. We were isolated in the western hemisphere, protected by two vast oceans, and relatively self-sufficient. All of that has changed: oceans no longer protect; Russia is less than one hundred miles away; and we are dependent not only upon foreign raw materials, but our economy is linked to that of the world. As we approach the two hundredth anniversary of the Constitution, there is greater need than ever for strength, and strength comes only from the sovereign people understanding and exercising their role in the government of the United States.

There are many organizations and associations which are concerned with American History, Citizenship Education, and Constitutional Awareness. They are concerned about the level of political understanding and participation within this country, and they are planning for the Bicentennial of the Constitution. They cannot plan within a void: they need leadership and coordination. This service must be provided by the federal government through the establishment of a federal commission. If you, Members of the United States Congress, are not sufficiently concerned to commit the time and energies of the federal government to commemorating the Constitution and the establishment of our nation, then the work of others will be greatly diminished. The two hundredth anniversary of the Constitution should be a time of contemplation and rededication to our government -- and the Courts, the Congress, and the President should be in the forefront.

Let me enumerate to you some of the components necessary to a proper commemoration of the Bicentennial of the Constitution and the establishment of our federal government. First and foremost, there must be broad citizen participation — at all levels, with all ages. The Constitution established three independent and co-equal branches of government; each should serve in the federal commission. We must not just look at the writing of the Constitution, but its antecedents, the debates concerning its ratification, its adoption, and the establishment of all three branches of government all merit attention. Ours is a federal government, so the State and local governments must have a role in the commemoration. There must be celebration, but this point in our mutual history should be a time for contemplation and rededication to the values enunciated by the Founding Fathers. Finally, since ours is a government of the people, by the people, and for the people, the federal government should have a commission, but its role should be to provide leadership, coordination, and support, not control. The Bicentennial of the Constitution should be commemorated by the people through their own organizations, associations, and clubs.

We want, we need, more than a birthday party for the Constitution. We, the American people, from east to west, from the oldest to the youngest, no matter what our origins, race, color, or time of residence, need to use the time between now and 1989 to reeducate and rededicate ourselves to the Constitution, its underlying values, and our role in the successful operation of the government it has established.

PREPARED STATEMENT OF SENATOR JENNINGS RANDOLPH
OF WEST VIRGINIA

Mr. Chairman. On February 2, we lunched with our respective state delegates to the United States Senate Youth Program. Since 1962, the William Randolph Hearst Foundation has made available the necessary funds for operating this outstanding forum.

Earlier that week I was privileged to address these young people at The Mayflower Hotel, which serves as headquarters for the United States Senate Youth Program in Washington, D.C.

As the author of the 26th Amendment to the Constitution of the United States, I encouraged these sholars -- who are or will be eighteen years of age by the next election day -- to take a more active part in our democracy. That night we also discussed the Bicentennial of the Constitution.

A young man, Telly Nakos of Fort Wayne, Indiana, has expressed his views and summed up the feelings of our younger generation on the need for the Commission on the Bicentennial of the Constitution.

Mr. Chairman. I ask that the words written by this future leader of our country be placed in this hearing record.

STATEMENT BY TELLY NAKOS
FORT WAYNE, INDIANA

I recently had the opportunity to visit Washington, D.C. as a delegate from Indiana to the United States Senate Youth Program. I was fascinated with being able to look at the City as "the nerve center" that runs our democratic form of government. We heard many of our Nation's political leaders address important issues concerning our country. Senator Randolph spoke to us, and one of the many topics he discussed was the bill to create a Commission on the Bicentennial of the United States Constitution.

Being involved in a Junior Reserve Officers Training Corps Distinguished Honor Unit for four years and having submitted an application to the United States Military Academy at West Point are two examples of my concern for our country and belief it is important to preserve the freedom we have in America. We are assured of the freedoms we have because of the Constitution of our United States.

When we say "United States Government," we do not realize all of the benefits that are included. Our democratic form of government allows us to partake of life, liberty and the pursuit of happiness. Since we often take for granted our free way of life, I believe it would be appropriate to have activities throughout our country to commemorate the Bicentennial of the Constitution. It would help United States citizens to pause and realize what we truly have.

As a young man, I understand that the future of our country will rest upon the younger generation. I believe we must study and learn more about our American heritage. In what better way can we do this than by celebrating and educating ourselves on our Constitution?

We have had a great government and accomplished much since its inception. Now it is our younger generation which must preserve this way of governing and life. I am conscious of the problems our Nation is facing and can recognize what the future could bring; and yet, with the strength that the Constitution provides, I have no doubt that we can successfully meet these challenges. The Constitution has given meaning to our political system and guarantees the continuation of an efficient, effective and strong government.

I share my views in a serious manner because I feel it is time for the leaders of tomorrow to be heard today. I appreciate this opportunity to contribute my thoughts on the Constitution of the United States -- the document which established our great way of life and continues to allow us to have our freedom.

BEST COPY AVAILABLE

INTERNATIONAL OFFICERS

CHARLES H. TAYLOR
International Justice

FREDRICK J. WEITKAMP
Executive Director

JUVENILE JUSTICE
ADVISORY COUNCIL

JENNIFER BROWN
Department of Education
Baltimore, Maryland

MARK W. CANNON
United States Supreme Court
Washington, D.C.

DONALD S. DAWSON
Attorney
Washington, D.C.

EMLYN I. GRIFFITH
Attorney
Rome, New York

DEAN DAVID J. McCARTHY
Georgetown University Law Center
Washington, D.C.

ALICE O'DONNELL
Federal Judicial Center
Washington, D.C.

ISIDORE STARR
Educator
Phoenix, Arizona

HON. JOHN C. TRACEY
Juvenile Judge
Montgomery County, Maryland

JUVENILE JUSTICE OFFICE

ROBERT E. REDDING
Director

DIANE EVANGELISTA
Michigan Consultant

DENNIS KIRK
Alumni Consultant

LINDA RIEKES
Community Resource Consultant

DAVID M. SCHIMMEL
Education Consultant

NORMAN SCOTT
Legal Consultant

JULIE VAN CAMP
Judicial Consultant

MARCY COHEN
Management Assistant

PATRICIA MILLARD
Law Student Coordinator

425 13th Street, N.W.
Washington, D.C. 20004
Telephone (202) 737-5151

(AS MERGED WITH PHI DELTA DELTA LEGAL FRATERNITY)

Honorable Orrin G. Hatch
Chairman
Subcommittee on the Constitution
Senate Judiciary Committee
Washington, D.C. 20510

Dear Mr. Chairman:

On March 1, 1983 your Subcommittee held a hearing regarding the Bicentennial of the Constitution. The Hearing related to S. 118, the 98th Congress version of the bill which twice passed the United States Senate unanimously in the 97th Congress.

The purpose of this letter is to indicate the support of the Phi Alpha Delta Law Fraternity, International for the establishment of a Commission for the commemoration of the Bicentennial of the United States Constitution.

It is the Fraternity's wish to become an active participant in the planning and commemoration activities. On July 11, 1981, the International Executive Board of the Fraternity unanimously approved a resolution to this effect, a copy of which is added to this statement.

I.

Phi Alpha Delta is an international professional law fraternity whose purpose is to serve the law student, the law school and the legal profession of the nation. It has carried out this program for 80 years as a non-profit organization.

The Fraternity has become the second largest organization in the legal profession, second only to the American Bar Association. With a membership exceeding 100,000 lawyers, judges, government leaders, law school faculty, and law students, more than 3,000 persons become members each year without restriction due to sex, age, color, creed, religion or national origin. The Fraternity has more than 160 law school chapters,

BEST COPY AVAILABLE

chartered at American Bar Association accredited law schools throughout the United States, Puerto Rico, Canada and Mexico.

Alumni chapters of the Fraternity have been chartered in 80 North American cities, metropolitan areas and Puerto Rico. We are committed to equal justice under law, to the maintenance of an effective legal system serving the needs of all citizens, and to the highest standards of professional ethics practiced by the legal profession.

The leadership of the Fraternity has consistently been derived from top echelons of the legal profession. I am the present International Justice. Our immediate past International Justice is the Honorable Steve Clark, Attorney General of Arkansas. Other past members of the PAD International Executive Board have included distinguished lawyers, as well as Justices serving on the Supreme Court of the United States, State Supreme Courts, other Federal, state and local courts, and other governmental capacities. An enclosed brochure, entitled, "This is PAD," will identify not only the many distinguished leaders of the Fraternity but also its many professional service programs.

The Fraternity's involvement in the field of juvenile justice and delinquency prevention, an expansion of its service program, got underway in February, 1979. At that time, the Fraternity was awarded a two-year grant by the Office of Juvenile Justice and Delinquency Prevention, (OJJDP) to participate in a nationwide law-related education program funded pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974. Continuation grants have been awarded for the Fraternity to continue its work in this field. We are proud to be participants in this public interest program because we think it offers a strong preventative deterrent to juvenile delinquency and crime, now one of the leading national problems facing our cities. An enclosed brochure entitled "Teaching Youth About the Law," describes this program and also lists the present members of the International Executive Board.

II.

We think that the Subcommittee will be interested to know of the Fraternity's activities concerning the forthcoming Bicentennial commemoration. Last fall, Phi Alpha Delta was the recipient of a planning grant from the National Endowment for the Humanities to develop a program to increase citizen understanding of the profound historic issues, philosophical principles, and jurisprudential foundations of the Constitution in general and the First Amendment in particular. We look forward to the continuation of this project, inasmuch as the Fraternity was the only organization in the legal profession to receive such a planning grant.

III.

On September 24, 1981 we submitted a statement in support of Bicentennial legislation to your Subcommittee at the time hearings were held on S. 477, introduced on February 16, 1981 in the 97th Congress.

We again encourage the Congress and the President to proceed expeditiously with the establishment of the Bicentennial Commission. It is our feeling that because of the relationship of the United States Constitution and the Bill of Rights to the very structure of our Nation, it behooves all members of the legal profession to help make this approaching anniversary a lasting observance by all citizens.

We thank the Subcommittee for the privilege of presenting our views.

Respectfully,

Charles H. Taylor

Charles H. Taylor
International Justice

Enclosures

JUVENILE JUSTICE OFFICE

STEVE CLARK
INTERNATIONAL JUSTICE

ROBERT E. REDDING
DIRECTOR

NORMAN SCOTT
DEPUTY DIRECTOR

DAVID M. SCHIMMEL
EDUCATION CONSULTANT

910 17th Street, N.W.
Suite 310
Washington, D.C. 20006
Telephone (202) 293-2181

(AS MERGED WITH PHI DELTA DELTA LEGAL FRATERNITY)

RESOLUTION

WHEREAS this Nation approaches the bicentennial of the adoption of its Constitution and the historic events preceding and associated with its preparation and ratification (events having a profound influence throughout the world and a major significance in the development of our national heritage of individual liberty, representative government, and equal justice under the law) it is appropriate and desirable for all citizens to take notice of the observation and commemoration of this anniversary and these events through local, State, national and international activities; and

WHEREAS Phi Alpha Delta Law Fraternity, International, is the second largest organization in the legal profession today with a continuing commitment to render professional services that will benefit law students, law schools, the legal profession, and the nation; and

WHEREAS it would be fitting for the Fraternity to volunteer to become associated with all other participating organizations in the planning, development, and coordination of observances and activities associated with this bicentennial;

NOW, THEREFORE, BE IT RESOLVED on July 11, 1981 by the International Executive Board of the Phi Alpha Delta Law Fraternity, International, that the Fraternity become an active participant in the observation and commemoration of this anniversary.

/s/ Fredrick J. Weitkamp
Fredrick J. Weitkamp, Executive Director

BEST COPY AVAILABLE